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SECTION A

TENNESSEE VALLEY AUTHORITY ACT AS AMENDED

[PUBLIC—No. 17--73d CONGRESS, 1st SESSION]

[H.R. 5081]

[As amended by Public—No. 412—74th Congress,
1st Session]

[H.R. 8632]

AN ACT

To improve the navigability and to provide for the flood control of the Tennessee River; to provide for reforestation and the proper use of marginal lands in the Tennessee Valley; to provide for the agricultural and industrial development of said valley; to provide for the national defense by the creation of a corporation for the operation of Government properties at and near Muscle Shoals in the State of Alabama, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of maintaining and operating the properties now owned by the United States in the vicinity of Muscle Shoals, Alabama, in the interest of the national defense and for agricultural and industrial development, and to improve navigation in the Tennessee River and to control the destructive flood waters in the Tennessee River and Mississippi River Basins, there is hereby created a body corporate by the name of the "Tennessee Valley Authority" (hereinafter referred to as the "Corporation"). The board of directors first appointed shall be deemed the incorporators, and the incorporation shall be held to have been effected from the date of the first

meeting of the board. This Act may be cited as the "Tennessee Valley Authority Act of 1933."

SEC. 2. (a) The board of directors of the Corporation (hereinafter referred to as the "board") shall be composed of three members, to be appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the board, the President shall designate the chairman. All other officials, agents, and employees shall be designated and selected by the board.

(b) The terms of office of the members first taking office after the approval of this Act shall expire as designated by the President at the time of nomination, one at the end of the third year, one at the end of the sixth year, and one at the end of the ninth year, after the date of approval of this Act. A successor to a member of the board shall be appointed in the same manner as the original members and shall have a term of office expiring nine years from the date of the expiration of the term for which his predecessor was appointed.

(c) Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(d) Vacancies in the board so long as there shall be two members in office shall not impair the powers of the board to execute the functions of the Corporation, and two of the members in office shall constitute a quorum for the transaction of the business of the board.

(e) Each of the members of the board shall be a citizen of the United States, and shall receive a salary at the rate of \$10,000 a year, to be paid by the Corporation as current expenses. Each member of the board, in addition to his salary, shall be permitted to occupy as his residence one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. Members of the board shall be reimbursed by the Corporation for actual expenses (including traveling and subsistence expenses)

incurred by them in the performance of the duties vested in the board by this Act. No member of said board shall, during his continuance in office, be engaged in any other business, but each member shall devote himself to the work of the Corporation.

(f) No director shall have financial interest in any public-utility corporation engaged in the business of distributing and selling power to the public nor in any corporation engaged in the manufacture, selling, or distribution of fixed nitrogen or fertilizer, or any ingredients thereof, nor shall any member have any interest in any business that may be adversely affected by the success of the Corporation as a producer of concentrated fertilizers or as a producer of electric power.

(g) The board shall direct the exercise of all the powers of the Corporation.

(h) All members of the board shall be persons who profess a belief in the feasibility and wisdom of this Act.

SEC. 3. The board shall without regard to the provisions of Civil Service laws applicable to officers and employees of the United States, appoint such managers, assistant managers, officers, employees, attorneys, and agents, as are necessary for the transaction of its business, fix their compensation, define their duties, require bonds of such of them as the board may designate, and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed in the discretion of the board. No regular officer or employee of the Corporation shall receive a salary in excess of that received by the members of the board.

All contracts to which the Corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance, or repair of buildings, dams, locks, or other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics.

In the event any dispute arises as to what are the prevailing rates of wages, the question shall be referred to the Secretary of Labor for determination, and his decision shall be final. In the determination of such prevailing rate or rates, due regard shall be given to those rates which have been secured through collective agreement by representatives of employers and employees.

Where such work as is described in the two preceding paragraphs is done directly by the Corporation the prevailing rate of wages shall be paid in the same manner as though such work had been let by contract.

Insofar as applicable, the benefits of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916, as amended, shall extend to persons given employment under the provisions of this Act.

SEC. 4. Except as otherwise specifically provided in this Act, the Corporation—

- (a) Shall have succession in its corporate name.
- (b) May sue and be sued in its corporate name.
- (c) May adopt and use a corporate seal, which shall be judicially noticed.
- (d) May make contracts, as herein authorized.
- (e) May adopt, amend, and repeal bylaws.
- (f) May purchase or lease and hold such real and personal property as it deems necessary or convenient in the transaction of its business, and may dispose of any such personal property held by it.

The board shall select a treasurer and as many assistant treasurers as it deems proper, which treasurer and assistant treasurers shall give such bonds for the safe-keeping of the securities and moneys of the said Corporation as the board may require: *Provided*, That any member of said board may be removed from office at any time by a concurrent resolution of the Senate and the House of Representatives.

(g) Shall have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the Corporation.

(h) Shall have power in the name of the United States of America to exercise the right of eminent domain, and in the purchase of any real estate or the acquisition of real estate by condemnation proceedings, the title to such real estate shall be taken in the name of the United States of America, and thereupon all such real estate shall be entrusted to the Corporation as the agent of the United States to accomplish the purposes of this Act.

(i) Shall have power to acquire real estate for the construction of dams, reservoirs, transmission lines, power houses, and other structures, and navigation projects at any point along the Tennessee River, or any of its tributaries, and in the event that the owner or owners of such property shall fail and refuse to sell to the Corporation at a price deemed fair and reasonable by the board, then the Corporation may proceed to exercise the right of eminent domain, and to condemn all property that it deems necessary for carrying out the purposes of this Act, and all such condemnation proceedings shall be had pursuant to the provisions and requirements hereinafter specified, with reference to any and all condemnation proceedings: *Provided*, That nothing contained herein or elsewhere in this Act shall be construed to deprive the Corporation of the rights conferred by the Act of February 26, 1931 (46 Stat. 1422, ch. 307, secs. 1 to 5, inclusive), as now compiled in section 258a to 258e, inclusive, of title 40 of the United States Code.

(j) Shall have power to construct such dams, and reservoirs, in the Tennessee River and its tributaries, as in conjunction with Wilson Dam, and Norris, Wheeler, and Pickwick Landing Dams, now under construction, will provide a nine-foot channel in the said river and maintain a water supply for the same, from Knoxville to its mouth, and will best serve to promote navigation on the Tennessee

River and its tributaries and control destructive flood waters in the Tennessee and Mississippi River drainage basins; and shall have power to acquire or construct power houses, power structures, transmission lines, navigation projects, and incidental works in the Tennessee River and its tributaries, and to unite the various power installations into one or more systems by transmission lines. The directors of the Authority are hereby directed to report to Congress their recommendations not later than April 1, 1936, for the unified development of the Tennessee River system.

(k) At any time before the expiration of five years from the date when this section, as amended, becomes law may in the name of and as agent for the United States and subject to approval of the President, dispose of any of such real property as in the judgment of the Board may be no longer necessary in carrying out the purposes of this Act, but no land shall be conveyed on which there is a permanent dam, hydraulic power plant, fertilizer plant, or munitions plant, heretofore or hereafter built by or for the United States or for the Authority.

(l) Shall have power to advise and cooperate in the readjustment of the population displaced by the construction of dams, the acquisition of reservoir areas, the protection of watersheds, the acquisition of rights-of-way, and other necessary acquisitions of land, in order to effectuate the purposes of the Act; and may cooperate with Federal, State, and local agencies to that end.

SEC. 5. The board is hereby authorized—

(a) To contract with commercial producers for the production of such fertilizers or fertilizer materials as may be needed in the Government's program of development and introduction in excess of that produced by Government plants. Such contracts may provide either for outright purchase of materials by the board or only for the payment of carrying charges on special materials manufactured at the board's request for its program.

(b) To arrange with farmers and farm organizations

for large-scale practical use of the new forms of fertilizers under conditions permitting an accurate measure of the economic return they produce.

(c) To cooperate with National, State, district, or county experimental stations or demonstration farms, with farmers, landowners, and associations of farmers or landowners, for the use of new forms of fertilizer or fertilizer practices during the initial or experimental period of their introduction, and for promoting the prevention of soil erosion by the use of fertilizers and otherwise.

(d) The board in order to improve and cheapen the production of fertilizer is authorized to manufacture and sell fixed nitrogen, fertilizer, and fertilizer ingredients at Muscle Shoals by the employment of existing facilities, by modernizing existing plants, or by any other process or processes that in its judgment shall appear wise and profitable for the fixation of atmospheric nitrogen or the cheapening of the production of fertilizer.

(e) Under the authority of this Act the board may make donations or sales of the product of the plant or plants operated by it to be fairly and equitably distributed through the agency of county demonstration agents, agricultural colleges, or otherwise as the board may direct, for experimentation, education, and introduction of the use of such products in cooperation with practical farmers so as to obtain information as to the value, effect, and best methods of their use.

(f) The board is authorized to make alterations, modifications, or improvements in existing plants and facilities, and to construct new plants.

(g) In the event it is not used for the fixation of nitrogen for agricultural purposes or leased, then the board shall maintain in stand-by condition nitrate plant numbered 2, or its equivalent, for the fixation of atmospheric nitrogen, for the production of explosives in the event of war or a national emergency, until the Congress shall by joint resolution release the board from this obligation, and

if any part thereof be used by the board for the manufacture of phosphoric acid or potash, the balance of nitrate plant numbered 2 shall be kept in stand-by condition.

(h) To establish, maintain, and operate laboratories and experimental plants, and to undertake experiments for the purpose of enabling the Corporation to furnish nitrogen products for military purposes, and nitrogen and other fertilizer products for agricultural purposes in the most economical manner and at the highest standard of efficiency.

(i) To request the assistance and advice of any officer, agent, or employee of any executive department or of any independent office of the United States, to enable the Corporation the better to carry out its powers successfully, and as far as practicable shall utilize the services of such officers, agents, and employees, and the President shall, if in his opinion, the public interest, service, or economy so require, direct that such assistance, advice, and service be rendered to the Corporation, and any individual that may be by the President directed to render such assistance, advice, and service shall be thereafter subject to the orders, rules, and regulations of the board: *Provided*, That any invention or discovery made by virtue of and incidental to such service by an employee of the Government of the United States serving under this section, or by any employee of the Corporation, together with any patents which may be granted thereon, shall be the sole and exclusive property of the Corporation, which is hereby authorized to grant such licenses thereunder as shall be authorized by the board: *Provided further*, That the board may pay to such inventor such sum from the income from sale of licenses as it may deem proper.

(j) Upon the requisition of the Secretary of War or the Secretary of the Navy to manufacture for and sell at cost to the United States explosives or their nitrogenous content.

(k) Upon the requisition of the Secretary of War, the

Corporation shall allot and deliver without charge to the War Department so much power as shall be necessary in the judgment of said Department for use in operation of all locks, lifts, or other facilities in aid of navigation.

(l) To produce, distribute, and sell electric power, as herein particularly specified.

(m) No products of the Corporation shall be sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war.

(n) The President is authorized, within twelve months after the passage of this Act, to lease to any responsible farm organization or to any corporation organized by it nitrate plant numbered 2 and Waco Quarry, together with the railroad connecting said quarry with nitrate plant numbered 2, for a term not exceeding fifty years at a rental of not less than \$1 per year, but such authority shall be subject to the express condition that the lessee shall use said property during the term of said lease exclusively for the manufacture of fertilizer and fertilizer ingredients to be used only in the manufacture of fertilizer by said lessee and sold for use as fertilizer. The said lessee shall covenant to keep said property in first-class condition, but the lessee shall be authorized to modernize said plant numbered 2 by the installation of such machinery as may be necessary, and is authorized to amortize the cost of said machinery and improvements over the term of said lease or any part thereof. Said lease shall also provide that the board shall sell to the lessee power for the operation of said plant at the same schedule of prices that it charges all other customers for power of the same class and quantity. Said lease shall also provide that, if the said lessee does not desire to buy power of the publicly owned plant, it shall have the right to purchase its power for the operation of said plant of the Alabama Power Company or any other publicly or privately owned corporation engaged in the generation and sale of electric power, and in such case the

lease shall provide further that the said lessee shall have a free right of way to build a transmission line over Government property to said plant paying the actual expenses and damages, if any, incurred by the Corporation on account of such line. Said lease shall also provide that the said lessee shall covenant that during the term of said lease the said lessee shall not enter into any illegal monopoly, combination, or trust with any privately owned corporation engaged in the manufacture, production, and sale of fertilizer with the object or effect of increasing the price of fertilizer to the farmer.

SEC. 6. In the appointment of officials and the selection of employees for said Corporation, and in the promotion of any such employees or officials, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency. Any member of said board who is found by the President of the United States to be guilty of a violation of this section shall be removed from office by the President of the United States, and any appointee of said board who is found by the board to be guilty of a violation of this section shall be removed from office by said board.

SEC. 7. In order to enable the Corporation to exercise the powers and duties vested in it by this Act—

(a) The exclusive use, possession, and control of the United States nitrate plants numbered 1 and 2, including steam plants, located, respectively, at Sheffield, Alabama, and Muscle Shoals, Alabama, together with all real estate and buildings connected therewith, all tools and machinery, equipment, accessories, and materials belonging thereto, and all laboratories and plants used as auxiliaries thereto; the fixed-nitrogen research laboratory, the Waco limestone quarry, in Alabama, and Dam Numbered 2, located at Muscle Shoals, its power house, and all hydroelectric and operating appurtenances (except the locks), and all machinery, lands, and buildings in connection therewith, and

all appurtenances thereof, and all other property to be acquired by the Corporation in its own name or in the name of the United States of America, are hereby intrusted to the Corporation for the purposes of this Act.

(b) The President of the United States is authorized to provide for the transfer to the Corporation of the use, possession, and control of such other real or personal property of the United States as he may from time to time deem necessary and proper for the purposes of the Corporation, as herein stated.

SEC. 8. (a) The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits.

(b) The Corporation shall at all times maintain complete and accurate books of accounts.

(c) Each member of the board, before entering upon the duties of his office, shall subscribe to an oath (or affirmation) to support the Constitution of the United States and to faithfully and impartially perform the duties imposed upon him by this Act.

SEC. 9. (a) The board shall file with the President and with the Congress, in December of each year, a financial statement and a complete report as to the business of the Corporation covering the preceding governmental fiscal year. This report shall include an itemized statement of the cost of power at each power station, the total number of employees and the names, salaries, and duties of those receiving compensation at the rate of more than \$1,500 a year.

(b) All purchases and contracts for supplies or services, except for personal services, made by the Corporation, shall be made after advertising, in such manner and at such times sufficiently in advance of opening bids, as the board shall determine to be adequate to insure notice and oppor-

tunity for competition: *Provided*, That advertisement shall not be required when, (1) an emergency requires immediate delivery of the supplies or performance of the services; or (2) repair parts, accessories, supplemental equipment, or services are required for supplies or services previously furnished or contracted for; or (3) the aggregate amount involved in any purchase of supplies or procurement of services does not exceed \$500; in which cases such purchases of supplies or procurement of services may be made in the open market in the manner common among business men: *Provided further*, That in comparing bids and in making awards the Board may consider such factors as relative quality and adaptability of supplies or services, the bidder's financial responsibility, skill, experience, record of integrity in dealing, ability to furnish repairs and maintenance services, the time of delivery or performance offered, and whether the bidder has complied with the specifications.

The Comptroller General of the United States shall audit the transactions of the Corporation at such times as he shall determine, but not less frequently than once each governmental fiscal year, with personnel of his selection. In such connection he and his representatives shall have free and open access to all papers, books, records, files, accounts, plants, warehouses, offices, and all other things, property, and places belonging to or under the control of or used or employed by the Corporation, and shall be afforded full facilities for counting all cash and verifying transactions with and balances in depositaries. He shall make report of each such audit in quadruplicate, one copy for the President of the United States, one for the chairman of the Board, one for public inspection at the principal office of the Corporation, and the other to be retained by him for the uses of the Congress: *Provided*, That such report shall not be made until the Corporation shall have had reasonable opportunity to examine the exceptions and criticisms of the Comptroller General or the General Ac-

counting Office, to point out errors therein, explain or answer the same, and to file a statement which shall be submitted by the Comptroller General with his report. The expenses for each such audit shall be paid from any appropriation or appropriations for the General Accounting Office, and such part of such expenses as may be allocated to the cost of generating, transmitting, and distributing electric energy shall be reimbursed promptly by the Corporation as billed by the Comptroller General. The Comptroller General shall make special report to the President of the United States and to the Congress of any transaction or condition found by him to be in conflict with the powers or duties entrusted to the Corporation by law.

SEC. 9a. The Board is hereby directed in the operation of any dam or reservoir in its possession and control to regulate the stream flow primarily for the purposes of promoting navigation and controlling floods. So far as may be consistent with such purposes, the Board is authorized to provide and operate facilities for the generation of electric energy at any such dam for the use of the Corporation and for the use of the United States or any agency thereof, and the Board is further authorized, whenever an opportunity is afforded, to provide and operate facilities for the generation of electric energy in order to avoid the waste of water power, to transmit and market such power as in this act provided, and thereby, so far as may be practicable, to assist in liquidating the cost or aid in the maintenance of the projects of the Authority.

SEC. 10. The board is hereby empowered and authorized to sell the surplus power not used in its operations, and for operation of locks and other works generated by it, to States, counties, municipalities, corporations, partnerships, or individuals, according to the policies hereinafter set forth; and to carry out said authority, the board is authorized to enter into contracts for such sale for a term not exceeding twenty years, and in the sale of such current by the board it shall give preference to States, counties,

municipalities, and cooperative organizations of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens or members: *Provided*, That all contracts made with private companies or individuals for the sale of power, which power is to be resold for a profit, shall contain a provision authorizing the board to cancel said contract upon five years' notice in writing, if the board needs said power to supply the demands of States, counties, or municipalities. In order to promote and encourage the fullest possible use of electric light and power on farms within reasonable distance of any of its transmission lines the board in its discretion shall have power to construct transmission lines to farms and small villages that are not otherwise supplied with electricity at reasonable rates, and to make such rules and regulations governing such sale and distribution of such electric power as in its judgment may be just and equitable: *Provided further*, That the board is hereby authorized and directed to make studies, experiments, and determinations to promote the wider and better use of electric power for agricultural and domestic use, or for small or local industries, and it may cooperate with State governments, or their subdivisions or agencies, with educational or research institutions, and with cooperatives or other organizations, in the application of electric power to the fuller and better balanced development of the resources of the region: *Provided further*, That the Board is authorized to include in any contract for the sale of power such terms and conditions, including resale rate schedules, and to provide for such rules and regulations as in its judgment may be necessary or desirable for carrying out the purposes of this Act, and in case the purchaser shall fail to comply with any such terms and conditions, or violate any such rules and regulations, said contract may provide that it shall be voidable at the election of the Board: *Provided further*, That in order to supply farms and small villages with electric power directly as contemplated by this section, the

Board in its discretion shall have power to acquire existing electric facilities used in serving such farms and small villages: *And provided further*, That the terms "States", "counties", and "municipalities" as used in this Act shall be construed to include the public agencies of any of them unless the context requires a different construction.

SEC. 11. It is hereby declared to be the policy of the Government so far as practical to distribute and sell the surplus power generated at Muscle Shoals equitably among the States, counties, and municipalities within transmission distance. This policy is further declared to be that the projects herein provided for shall be considered primarily as for the benefit of the people of the section as a whole and particularly the domestic and rural consumers to whom the power can economically be made available, and accordingly that sale to and use by industry shall be a secondary purpose, to be utilized principally to secure a sufficiently high load factor and revenue returns which will permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity. It is further hereby declared to be the policy of the Government to utilize the Muscle Shoals properties so far as may be necessary to improve, increase, and cheapen the production of fertilizer and fertilizer ingredients by carrying out the provisions of this Act.

SEC. 12. In order to place the board upon a fair basis for making such contracts and for receiving bids for the sale of such power, it is hereby expressly authorized, either from appropriations made by Congress or from funds secured from the sale of such power, or from funds secured by the sale of bonds hereafter provided for, to construct, lease, purchase, or authorize the construction of transmission lines within transmission distance from the place where generated, and to interconnect with other systems. The board is also authorized to lease to any person, persons, or corporation the use of any transmission line owned by the

Government and operated by the board, but no such lease shall be made that in any way interferes with the use of such transmission line by the board: *Provided*, That if any State, county, municipality, or other public or cooperative organization of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens or members, or any two or more of such municipalities or organizations, shall construct or agree to construct and maintain a properly designed and built transmission line to the Government reservation upon which is located a Government generating plant, or to a main transmission line owned by the Government or leased by the board and under the control of the board, the board is hereby authorized and directed to contract with such State, county, municipality, or other organization, or two or more of them, for the sale of electricity for a term not exceeding thirty years; and in any such case the board shall give to such State, county, municipality, or other organization ample time to fully comply with any local law now in existence or hereafter enacted providing for the necessary legal authority for such State, county, municipality, or other organization to contract with the board for such power: *Provided further*, That all contracts entered into between the Corporation and any municipality or other political subdivision or cooperative organization shall provide that the electric power shall be sold and distributed to the ultimate consumer without discrimination as between consumers of the same class, and such contract shall be voidable at the election of the board if a discriminatory rate, rebate, or other special concession is made or given to any consumer or user by the municipality or other political subdivision or cooperative organization: *And provided further*, That as to any surplus power not so sold as above provided to States, counties, municipalities, or other said organizations, before the board shall sell the same to any person or corporation engaged in the distribution and resale of electricity for profit, it shall require said

person or corporation to agree that any resale of such electric power by said person or corporation shall be made to the ultimate consumer of such electric power at prices that shall not exceed a schedule fixed by the board from time to time as reasonable, just, and fair; and in case of any such sale, if an amount is charged the ultimate consumer which is in excess of the price so deemed to be just, reasonable, and fair by the board, the contract for such sale between the board and such distributor of electricity shall be voidable at the election of the board: *And provided further*, That the board is hereby authorized to enter into contracts with other power systems for the mutual exchange of unused excess power upon suitable terms, for the conservation of stored water, and as an emergency or breakdown relief.

SEC. 12a. In order (1) to facilitate the disposition of the surplus power of the Corporation according to the policies set forth in this Act; (2) to give effect to the priority herein accorded to States, counties, municipalities, and nonprofit organizations in the purchase of such power: by enabling them to acquire facilities for the distribution of such power; and (3) at the same time to preserve existing distribution facilities as going concerns and avoid duplication of such facilities, the Board is authorized to advise and cooperate with and assist, by extending credit for a period of not exceeding five years to, States, Counties, municipalities and nonprofit organizations situated within transmission distance from any dam where such power is generated by the Corporation in acquiring, improving, and operating (a) existing distribution facilities and incidental works, including generating plants; and (b) interconnecting transmission lines; or in acquiring any interest in such facilities, incidental works, and lines.

SEC. 13. Five per centum of the gross proceeds received by the board for the sale of power generated at Dam Numbered 2, or from any other hydropower plant hereafter constructed in the State of Alabama, shall be paid to the State of Alabama; and 5 per centum of the gross proceeds

from the sale of power generated at Cove Creek Dam, hereinafter provided for, or any other dam located in the State of Tennessee, shall be paid to the State of Tennessee. Upon the completion of said Cove Creek Dam the board shall ascertain how much additional power is thereby generated at Dam Numbered 2 and at any other dam hereafter constructed by the Government of the United States on the Tennessee River, in the State of Alabama, or in the State of Tennessee, and from the gross proceeds of the sale of such additional power $2\frac{1}{2}$ per centum shall be paid to the State of Alabama and $2\frac{1}{2}$ per centum to the State of Tennessee. These percentages shall apply to any other dam that may hereafter be constructed and controlled and operated by the board on the Tennessee River or any of its tributaries, the main purpose of which is to control flood waters and where the development of electric power is incidental to the operation of such flood-control dam. In ascertaining the gross proceeds from the sale of such power upon which a percentage is paid to the States of Alabama and Tennessee, the board shall not take into consideration the proceeds of any power sold or delivered to the Government of the United States, or any department or agency of the Government of the United States, used in the operation of any locks on the Tennessee River or for any experimental purpose, or for the manufacture of fertilizer or any of the ingredients thereof, or for any other governmental purpose: *Provided*, That the percentages to be paid to the States of Alabama and Tennessee, as provided in this section, shall be subject to revision and change by the board, and any new percentages established by the board, when approved by the President, shall remain in effect until and unless again changed by the board with the approval of the President. No change of said percentages shall be made more often than once in five years, and no change shall be made without giving to the States of Alabama and Tennessee an opportunity to be heard.

SEC. 14. The board shall make a thorough investigation as to the present value of Dam Numbered 2, and the steam

plants at nitrate plant numbered 1, and nitrate plant numbered 2, and as to the cost of Cove Creek Dam, for the purpose of ascertaining how much of the value or the cost of said properties shall be allocated and charged up to (1) flood control, (2) navigation, (3) fertilizer, (4) national defense, and (5) the development of power. The findings thus made by the board, when approved by the President of the United States, shall be final, and such findings shall thereafter be used in all allocation of value for the purpose of keeping the book value of said properties. In like manner, the cost and book value of any dams, steam plants, or other similar improvements hereafter constructed and turned over to said board for the purpose of control and management shall be ascertained and allocated.

The Board shall, on or before January 1, 1937, file with Congress a statement of its allocation of the value of all such properties turned over to said Board, and which have been completed prior to the end of the preceding fiscal year, and shall thereafter in its annual report to Congress file a statement of its allocation of the value of such properties as have been completed during the preceding fiscal year.

For the purpose of accumulating data useful to the Congress in the formulation of legislative policy in matters relating to the generation, transmission, and distribution of electric energy and the production of chemicals necessary to national defense and useful in agriculture, and to the Federal Power Commission and other Federal and State agencies, and to the public, the Board shall keep complete accounts of its costs of generation, transmission, and distribution of electric energy and shall keep a complete account of the total cost of generating and transmission facilities constructed or otherwise acquired by the Corporation, and of producing such chemicals, and a description of the major components of such costs according to such uniform system of accounting for public utilities as the Federal Power Commission has, and if it have none, then it is hereby empowered and directed to prescribe such

uniform system of accounting, together with records of such other physical data and operating statistics of the Authority as may be helpful in determining the actual cost and value of services, and the practices, methods, facilities, equipment, appliances, and standards and sizes, types, location, and geographical and economic integration of plants and systems best suited to promote the public interest, efficiency, and the wider and more economical use of electric energy. Such data shall be reported to the Congress by the Board from time to time with appropriate analyses and recommendations, and, so far as practicable, shall be made available to the Federal Power Commission and other Federal and State agencies which may be concerned with the administration of legislation relating to the generation, transmission, or distribution of electric energy and chemicals useful to agriculture. It is hereby declared to be the policy of this Act that, in order, as soon as practicable, to make the power projects self-supporting and self-liquidating, the surplus power shall be sold at rates which, in the opinion of the Board, when applied to the normal capacity of the Authority's power facilities, will produce gross revenues in excess of the cost of production of said power and in addition to the statement of the cost of power at each power station as required by section 9 (a) of the "Tennessee Valley Act of 1933", the Board shall file with each annual report, a statement of the total cost of all power generated by it at all power stations during each year, the average cost of such power per kilowatt hour, the rates at which sold, and to whom sold, and copies of all contracts for the sale of power.

SEC. 15. In the construction of any future dam, steam plant, or other facility, to be used in whole or in part for the generation or transmission of electric power the board is hereby authorized and empowered to issue on the credit of the United States and to sell serial bonds not exceeding \$50,000,000 in amount, having a maturity not more than fifty years from the date of issue thereof, and bearing in-

terest not exceeding $3\frac{1}{2}$ per centum per annum. Said bonds shall be issued and sold in amounts and prices approved by the Secretary of the Treasury, but all such bonds as may be so issued and sold shall have equal rank. None of said bonds shall be sold below par, and no fee, commission, or compensation whatever shall be paid to any person, firm, or corporation for handling, negotiating the sale, or selling the said bonds. All of such bonds so issued and sold shall have all the rights and privileges accorded by law to Panama Canal bonds, authorized by section 8 of the act of June 28, 1902, chapter 1302, as amended by the act of December 21, 1905 (ch. 3, sec. 1, 34 Stat. 5), as now compiled in section 743 of title 31 of the United States Code. All funds derived from the sale of such bonds shall be paid over to the Corporation.

SEC. 15a. With the approval of the Secretary of the Treasury, the Corporation is authorized to issue bonds not to exceed in the aggregate \$50,000,000 outstanding at any one time, which bonds may be sold by the Corporation to obtain funds to carry out the provisions of section 12a of this Act. Such bonds shall be in such forms and denominations, shall mature within such periods not more than fifty years from the date of their issue, may be redeemable at the option of the Corporation before maturity in such manner as may be stipulated therein, shall bear such rates of interest not exceeding $3\frac{1}{2}$ per centum per annum, shall be subject to such terms and conditions, shall be issued in such manner and amount, and sold at such prices, as may be prescribed by the Corporation, with the approval of the Secretary of the Treasury: *Provided*, That such bonds shall not be sold at such prices or on such terms as to afford an investment yield to the holders in excess of $3\frac{1}{2}$ per centum per annum. Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such bonds shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and

public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Corporation should not pay upon demand, when due, the principal of, or interest on, such bonds, the Secretary of the Treasury shall pay to the holder the amount thereof, which is hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such bonds. The Secretary of the Treasury, in his discretion, is authorized to purchase any bonds issued hereunder, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of the Corporation's bonds hereunder. The Secretary of the Treasury may, at any time, sell any of the bonds of the Corporation acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of the bonds of the Corporation shall be treated as public-debt transactions of the United States. With the approval of the Secretary of the Treasury, the Corporation shall have power to purchase such bonds in the open market at any time and at any price. No bonds shall be issued hereunder to provide funds or bonds necessary for the performance of any proposed contract negotiated by the Corporation under the authority of section 12a of this Act until the proposed contract shall have been submitted to and approved by the Federal Power Commission. When any such proposed contract shall have been submitted to the said Commission, the matter shall be given precedence and shall be in every way expedited and the Commission's determination of the matter shall be final. The authority of the Corporation to issue bonds hereunder shall expire at the end of five years from the date when this section as amended herein becomes

law, except that such bonds may be issued at any time after the expiration of said period to provide bonds or funds necessary for the performance of any contract entered into by the Corporation, prior to the expiration of said period, under the authority of section 12a of this Act.

SEC. 16. The board, whenever the President deems it advisable, is hereby empowered and directed to complete Dam Numbered 2 at Muscle Shoals, Alabama, and the steam plant at nitrate plant numbered 2, in the vicinity of Muscle Shoals, by installing in Dam Numbered 2 the additional power units according to the plans and specifications of said dam, and the additional power unit in the steam plant at nitrate plant numbered 2.

SEC. 17. The Secretary of War, or the Secretary of the Interior, is hereby authorized to construct, either directly or by contract to the lowest responsible bidder, after due advertisement, a dam in and across Clinch River in the State of Tennessee, which has by long custom become known and designated as the Cove Creek Dam, together with a transmission line from Muscle Shoals, according to the latest and most approved designs, including power house and hydroelectric installations and equipment for the generation of power, in order that the waters of the said Clinch River may be impounded and stored above said dam for the purpose of increasing and regulating the flow of the Clinch River and the Tennessee River below, so that the maximum amount of primary power may be developed at Dam Numbered 2 and at any and all other dams below the said Cove Creek Dam: *Provided, however,* That the President is hereby authorized by appropriate order to direct the employment by the Secretary of War, or by the Secretary of the Interior, of such engineer or engineers as he may designate, to perform such duties and obligations as he may deem proper, either in the drawing of plans and specifications for said dam, or to perform any other work in the building or construction of the same. The President may, by such order, place the control of the construction

of said dam in the hands of such engineer or engineers taken from private life as he may desire: *And provided further*, That the President is hereby expressly authorized, without regard to the restriction or limitation of any other statute, to select attorneys and assistants for the purpose of making any investigation he may deem proper to ascertain whether, in the control and management of Dam Numbered 2, or any other dam or property owned by the Government in the Tennessee River Basin, or in the authorization of any improvement therein, there has been any undue or unfair advantage given to private persons, partnerships, or corporations, by any officials or employees of the Government, or whether in any such matters the Government has been injured or unjustly deprived of any of its rights.

SEC. 18. In order to enable and empower the Secretary of War, the Secretary of the Interior, or the board to carry out the authority hereby conferred, in the most economical and efficient manner, he or it is hereby authorized and empowered in the exercise of the powers of national defense in aid of navigation, and in the control of the flood waters of the Tennessee and Mississippi Rivers, constituting channels of interstate commerce, to exercise the right of eminent domain for all purposes of this Act, and to condemn all lands, easements, rights of way, and other area necessary in order to obtain a site for said Cove Creek Dam, and the flowage rights for the reservoir of water above said dam, and to negotiate and conclude contracts with States, counties, municipalities, and all State agencies, and with railroads, railroad corporations, common carriers, and all public utility commissions, and any other person, firm, or corporation, for the relocation of railroad tracks, highways, highway bridges, mills, ferries, electric-light plants, and any and all other properties, enterprises, and projects whose removal may be necessary in order to carry out the provisions of this Act. When said Cove Creek Dam, transmission line, and power house shall have been completed, the possession, use, and control thereof shall be intrusted to the

Corporation for use and operation in connection with the general Tennessee Valley project, and to promote flood control and navigation in the Tennessee River.

SEC. 19. The Corporation, as an instrumentality and agency of the Government of the United States for the purpose of executing its constitutional powers, shall have access to the Patent Office of the United States for the purpose of studying, ascertaining, and copying all methods, formulae, and scientific information (not including access to pending applications for patents) necessary to enable the Corporation to use and employ the most efficacious and economical process for the production of fixed nitrogen, or any essential ingredient of fertilizer, or any method of improving and cheapening the production of hydroelectric power, and any owner of a patent whose patent rights may have been thus in any way copied, used, infringed, or employed by the exercise of this authority by the Corporation shall have as the exclusive remedy a cause of action against the Corporation, to be instituted and prosecuted on the equity side of the appropriate district court of the United States, for the recovery of reasonable compensation for such infringement. The Commissioner of Patents shall furnish to the Corporation, at its request and without payment of fees, copies of documents on file in his office: *Provided*, That the benefits of this section shall not apply to any art, machine, method of manufacture, or composition of matter, discovered or invented by such employee during the time of his employment or service with the Corporation or with the Government of the United States.

SEC. 20. The Government of the United States hereby reserves the right, in case of war or national emergency declared by Congress, to take possession of all or any part of the property described or referred to in this Act for the purpose of manufacturing explosives or for other war purposes; but, if this right is exercised by the Government, it shall pay the reasonable and fair damages that may be suffered by any party whose contract for the purchase of elec-

tric power or fixed nitrogen or fertilizer ingredients is hereby violated, after the amount of the damages has been fixed by the United States Court of Claims in proceedings instituted and conducted for that purpose under rules prescribed by the court.

SEC. 21. (a) All general penal statutes relating to the larceny, embezzlement, conversion, or to the improper handling, retention, use, or disposal of public moneys or property of the United States shall apply to the moneys and property of the Corporation and to moneys and properties of the United States intrusted to the Corporation.

(b) Any person who, with intent to defraud the Corporation, or to deceive any director, officer, or employee of the Corporation or any officer or employee of the United States (1) makes any false entry in any book of the Corporation, or (2) makes any false report or statement for the Corporation, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than five years, or both.

(c) Any person who shall receive any compensation, rebate, or reward, or shall enter into any conspiracy, collusion, or agreement, express or implied, with intent to defraud the Corporation or wrongfully and unlawfully to defeat its purposes, shall, on conviction thereof, be fined not more than \$5,000 or imprisoned not more than five years, or both.

SEC. 22. To aid further the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and of such adjoining territory as may be related to or materially affected by the development consequent to this Act, and to provide for the general welfare of the citizens of said areas, the President is hereby authorized, by such means or methods as he may deem proper within the limits of appropriations made therefor by Congress, to make such surveys of and general plans for said Tennessee basin and adjoining territory as may be useful to the Congress and to the several States in guiding and controlling the extent, sequence, and nature of development

that may be equitably and economically advanced through the expenditure of public funds, or through the guidance or control of public authority, all for the general purpose of fostering an orderly and proper physical, economic, and social development of said areas; and the President is further authorized in making said surveys and plans to co-operate with the States affected thereby, or subdivisions or agencies of such States, or with cooperative or other organizations, and to make such studies, experiments, or demonstrations as may be necessary and suitable to that end.

SEC. 23. The President shall, from time to time, as the work provided for in the preceding section progresses, recommend to Congress such legislation as he deems proper to carry out the general purposes stated in said section, and for the especial purpose of bringing about in said Tennessee drainage basin and adjoining territory in conformity with said general purposes (1) the maximum amount of flood control; (2) the maximum development of said Tennessee River for navigation purposes; (3) the maximum generation of electric power consistent with flood control and navigation; (4) the proper use of marginal lands; (5) the proper method of reforestation of all lands in said drainage basin suitable for reforestation; and (6) the economic and social well-being of the people living in said river basin.

SEC. 24. For the purpose of securing any rights of flowage, or obtaining title to or possession of any property, real or personal, that may be necessary or may become necessary, in the carrying out of any of the provisions of this Act, the President of the United States for a period of three years from the date of the enactment of this Act, is hereby authorized to acquire title in the name of the United States to such rights or such property, and to provide for the payment for same by directing the board to contract to deliver power generated at any of the plants now owned or hereafter owned or constructed by the Government or

by said Corporation, such future delivery of power to continue for a period not exceeding thirty years. Likewise, for one year after the enactment of this Act, the President is further authorized to sell or lease any parcel or part of any vacant real estate now owned by the Government in said Tennessee River Basin, to persons, firms, or corporations who shall contract to erect thereon factories or manufacturing establishments, and who shall contract to purchase of said Corporation electric power for the operation of any such factory or manufacturing establishment. No contract shall be made by the President for the sale of any of such real estate as may be necessary for present or future use on the part of the Government for any of the purposes of this Act. Any such contract made by the President of the United States shall be carried out by the board: *Provided*, That no such contract shall be made that will in any way abridge or take away the preference right to purchase power given in this Act to States, counties, municipalities, or farm organizations: *Provided further*, That no lease shall be for a term to exceed fifty years: *Provided further*, That any sale shall be on condition that said land shall be used for industrial purposes only.

SEC. 25. The Corporation may cause proceedings to be instituted for the acquisition by condemnation of any lands, easements, or rights of way which, in the opinion of the Corporation, are necessary to carry out the provisions of this Act. The proceedings shall be instituted in the United States district court for the district in which the land, easement, right of way, or other interest, or any part thereof, is located, and such court shall have full jurisdiction to divest the complete title to the property sought to be acquired out of all persons or claims and vest the same in the United States in fee simple, and to enter a decree quieting the title thereto in the United States of America.

Upon the filing of a petition for condemnation and for the purpose of ascertaining the value of the property to be acquired, and assessing the compensation to be paid, the

court shall appoint three commissioners who shall be disinterested persons and who shall take and subscribe an oath that they do not own any lands, or interest or easement in any lands, which it may be desirable for the United States to acquire in the furtherance of said project, and such commissioners shall not be selected from the locality wherein the land sought to be condemned lies. Such commissioners shall receive a per diem of not to exceed \$15 for their services, together with an additional amount of \$5 per day for subsistence for time actually spent in performing their duties as commissioners.

It shall be the duty of such commissioners to examine into the value of the lands sought to be condemned, to conduct hearings and receive evidence, and generally to take such appropriate steps as may be proper for the determination of the value of the said lands sought to be condemned, and for such purpose the commissioners are authorized to administer oaths and subpoena witnesses, which said witnesses shall receive the same fees as are provided for witnesses in the Federal courts. The said commissioners shall thereupon file a report setting forth their conclusions as to the value of the said property sought to be condemned, making a separate award and valuation in the premises with respect to each separate parcel involved. Upon the filing of such award in court the clerk of said court shall give notice of the filing of such award to the parties to said proceeding, in manner and form as directed by the judge of said court.

Either or both parties may file exceptions to the award of said commissioners within twenty days from the date of the filing of said award in court. Exceptions filed to such award shall be heard before three Federal district judges unless the parties, in writing, in person, or by their attorneys, stipulate that the exceptions may be heard before a lesser number of judges. On such hearing such judges shall pass de novo upon the proceedings had before the commissioners, may view the property, and may take

additional evidence. Upon such hearings the said judges shall file their own award, fixing therein the value of the property sought to be condemned, regardless of the award previously made by the said commissioners.

At any time within thirty days from the filing of the decision of the district judges upon the hearing on exceptions to the award made by the commissioners, either party may appeal from such decision of the said judges to the circuit court of appeals, and the said circuit court of appeals shall upon the hearing on said appeal dispose of the same upon the record, without regard to the awards or findings theretofore made by the commissioners or the district judges, and such circuit court of appeals shall thereupon fix the value of the said property sought to be condemned.

Upon acceptance of an award by the owner of any property herein provided to be appropriated, and the payment of the money awarded or upon the failure of either party to file exceptions to the award of the commissioners within the time specified, or upon the award of the commissioners, and the payment of the money by the United States pursuant thereto, or the payment of the money awarded into the registry of the court by the Corporation, the title to said property and the right to the possession thereof shall pass to the United States, and the United States shall be entitled to a writ in the same proceeding to dispossess the former owner of said property, and all lessees, agents, and attorneys of such former owner, and to put the United States, by its corporate creature and agent, the Corporation, into possession of said property.

In the event of any property owned in whole or in part by minors, or insane persons, or incompetent persons, or estates of deceased persons, then the legal representatives of such minors, insane persons, incompetent persons, or estates shall have power, by and with the consent and approval of the trial judge in whose court said matter is for determination, to consent to or reject the awards of the

commissioners herein provided for, and in the event that there be no legal representatives, or that the legal representatives for such minors, insane persons, or incompetent persons shall fail or decline to act, then such trial judge may, upon motion, appoint a guardian ad litem to act for such minors, insane persons, or incompetent persons, and such guardian ad litem shall act to the full extent and to the same purpose and effect as his ward could act, if competent, and such guardian ad litem shall be deemed to have full power and authority to respond, to conduct, or to maintain any proceeding herein provided for affecting his said ward.

SEC. 26. Commencing July 1, 1936, the proceeds for each fiscal year derived by the Board from the sale of power or any other products manufactured by the Corporation, and from any other activities of the Corporation including the disposition of any real or personal property, shall be paid into the Treasury of the United States at the end of each calendar year, save and except such part of such proceeds as in the opinion of the Board shall be necessary for the Corporation in the operation of dams and reservoirs, in conducting its business in generating, transmitting, and distributing electric energy and in manufacturing, selling, and distributing fertilizer and fertilizer ingredients. A continuing fund of \$1,000,000 is also excepted from the requirements of this section and may be withheld by the Board to defray emergency expenses and to insure continuous operation: *Provided*, That nothing in this section shall be construed to prevent the use by the Board, after June 30, 1936, of proceeds accruing prior to July 1, 1936, for the payment of obligations lawfully incurred prior to such latter date.

SEC. 26a. The unified development and regulation of the Tennessee River system requires that no dam, appurtenant works, or other obstruction, affecting navigation, flood control, or public lands or reservations shall be constructed, and thereafter operated or maintained across,

along, or in the said river or any of its tributaries until plans for such construction, operation, and maintenance shall have been submitted to and approved by the Board; and the construction, commencement of construction, operation, or maintenance of such structures without such approval is hereby prohibited. When such plans shall have been approved, deviation therefrom either before or after completion of such structures is prohibited unless the modification of such plans has previously been submitted to and approved by the Board.

In the event the Board shall, within sixty days after their formal submission to the Board, fail to approve any plans or modifications, as the case may be, for construction, operation, or maintenance of any such structures on the Little Tennessee River, the above requirements shall be deemed satisfied, if upon application to the Secretary of War, with due notice to the Corporation, and hearing thereon, such plans or modifications are approved by the said Secretary of War as reasonably adequate and effective for the unified development and regulation of the Tennessee River system.

Such construction, commencement of construction, operation, or maintenance of any structures or parts thereof in violation of the provisions of this section may be prevented, and the removal or discontinuation thereof required by the injunction or order of any district court exercising jurisdiction in any district in which such structures or parts thereof may be situated, and the Corporation is hereby authorized to bring appropriate proceedings to this end.

The requirements of this section shall not be construed to be a substitute for the requirements of any other law of the United States or of any State, now in effect or hereafter enacted, but shall be in addition thereto, so that any approval, license, permit, or other sanction now or hereafter required by the provisions of any such law for the construction, operation, or maintenance of any structures

whatever, except such as may be constructed, operated, or maintained by the Corporation, shall be required, notwithstanding the provisions of this section.

SEC. 27. All appropriations necessary to carry out the provisions of this Act are hereby authorized.

SEC. 28. That all Acts or parts of Acts in conflict herewith are hereby repealed, so far as they affect the operations contemplated by this Act.

SEC. 29. The right to alter, amend, or repeal this Act is hereby expressly declared and reserved, but no such amendment or repeal shall operate to impair the obligation of any contract made by said Corporation under any power conferred by this Act.

SEC. 30.¹ The sections of this Act are hereby declared to be separable, and in the event any one or more sections of this Act be held to be unconstitutional, the same shall not affect the validity of other sections of this Act.

SEC. 31. This Act shall be liberally construed to carry out the purposes of Congress to provide for the disposition of and make needful rules and regulations respecting Government properties entrusted to the Authority, provide for the national defense, improve navigation, control destructive floods, and promote interstate commerce and the general welfare, but no real estate shall be held except what is necessary in the opinion of the Board to carry out plans and projects actually decided upon requiring the use of such land: *Provided*, That any land purchased by the Authority and not necessary to carry out plans and projects actually decided upon shall be sold by the Authority as agent of the United States, after due advertisement, at public auction to the highest bidder, or at private sale as provided in section 4 (k) of this Act.

¹Section 15 of the amendatory Act provides as follows:

"That the sections of this Act are hereby declared to be separable, and in the event of any one or more sections of this Act, or parts thereof, be held to be unconstitutional, such holding shall not affect the validity of other sections or parts of this Act."

SECTION B**SENATE AND HOUSE REPORTS ON THE
TENNESSEE VALLEY AUTHORITY
ACT OF 1933**

Senate Report No. 23

73d Congress, 1st Session

(Committee on Agriculture and Forestry, April 12, 1933)

MUSCLE SHOALS AND TENNESSEE VALLEY DEVELOPMENT

The Senate Committee on Agriculture and Forestry, to which was referred the bill S. 1272, "To improve the navigability and to provide for the flood control of the Tennessee River, to provide for reforestation and the proper use of marginal lands in the Tennessee Valley; to provide for the agricultural and industrial development of said valley; to provide for the national defense by the creation of a corporation for the operation of Government properties at and near Muscle Shoals in the State of Alabama, and for other purposes", having had the same under consideration, beg leave to report it back to the Senate, with the following amendments:

On page 7, line 2, after the word "donations" insert "or sales."

On page 22, line 18, strike out the numeral "24" and insert in lieu thereof "23."

As thus amended, the committee unanimously recommends that the bill be passed.

The bill, as thus reported, with the exception hereafter referred to, is practically the same bill that the committee has reported at various times during the last 12 years. In brief, the bill provides:

(1) For the organization of a governmental corporation called "The Tennessee Valley Authority." To this corpora-

tion is given broad authority to have general supervision, within certain limitations provided for in the bill, of all property of all kinds now owned by the Government at Muscle Shoals and elsewhere in the Tennessee Valley.

(2) That the building of Cove Creek Dam, mainly a flood-control and navigation proposition, shall be constructed by the Government and turned over to said corporation for control and operation.

(3) Provision is made for the operation of all locks on the Tennessee River.

(4) For the operation of experimental plants on a larger scale than has ever before been undertaken in the history of the world, for the purpose of discovering new methods of production of fertilizers, with the object of cheapening the cost of fertilizers, not only to the farmers in the Tennessee Valley, but everywhere in the Nation.

(5) That the surplus power not used for governmental purposes and for fertilizer purposes shall be sold to the people anywhere within transmission distance from the place where it is generated. In the sale of this surplus power, preference is given to States, counties, municipalities, and farm organizations, organized not for profit but for the purpose of obtaining cheap light and power for their members.

(6) Any power not thus disposed of or used by the Government in fertilizer operations shall be sold to private corporations for distribution to their customers. The bill contains a provision that in the sale of power to private corporations for distribution and sale to their customers, such sale shall be at a price to be deemed fair and just by the corporation.

(7) The new provision of the bill provides that for the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin, the President is authorized within the limitations of appropriations made therefor by Congress to make such surveys and general plans for such Tennessee River drainage basin as may

be useful to the Congress and to the several States in guiding and controlling the extent, sequence, and nature of development that may be equitably and economically advanced through the expenditure of public funds or through the guidance and control of public authority. The President is authorized in making such surveys and plans to co-operate with the States affected thereby.

The object of this survey to be made by the President is for the general purpose of bringing about in said Tennessee River drainage basin, in conformity with said general purposes—

- (1) The maximum amount of flood control.
- (2) The maximum development of said Tennessee River for navigation purposes.
- (3) The maximum generation of electric power consistent with flood control and navigation.
- (4) The proper use of marginal lands.
- (5) The proper method of reforestation of all lands in said drainage basin suitable for reforestation.
- (6) The most practical method of improving agricultural conditions in the valleys of said drainage basin.

The President is also authorized to enter into contracts with any person or corporation for the purpose of obtaining title to any rights or property that may be necessary in carrying out the purposes of this bill, to contract with such owners for the payment of such rights by the delivery to such owners of power generated by the Government at any of its generating plants.

In general, the bill provides for a comprehensive method of development of the Tennessee Valley insofar as such development is of national concern in the proper use and control of the rivers and valleys of the entire Nation.

HOUSE REPORT NO. 48

73d Congress, 1st Session

(Committee on Military Affairs, April 20, 1933)

MUSCLE SHOALS

It was in the year 1824 that the Tennessee River navigation and Muscle Shoals question first made its appearance as a Federal problem. In that year President Monroe submitted to Congress the report of Secretary of War John C. Calhoun, recommending a survey of said river, looking to improve its navigation around the Muscle Shoals rapids, in aid of commerce and military operations. Alabama appropriated the proceeds of the sale of 40,000 acres of public lands that had been donated to that State by the Federal Government. From that day to this the subject has, from time to time, engaged the attention of the Nation. Finally, in the year 1916, the following provision was inserted in the National Defense Act, as section 124:

SEC. 124. NITRATE SUPPLY.—The President of the United States is hereby authorized and empowered to make, or cause to be made, such investigation as in his judgment is necessary to determine the best, cheapest, and most available means for the production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers and other useful products by water power or any other power as in his judgment is the best and cheapest to use; and is also hereby authorized and empowered to designate for the exclusive use of the United States, if in his judgment such means is best and cheapest, such site or sites, upon any navigable or nonnavigable river or rivers or upon the public lands, as in his opinion will be necessary for carrying out the purposes of this act; and is further authorized to construct, maintain, and operate, at or on any site or sites so designated, dams, locks, improvements to navigation, power houses, and other plants and equipment or other means than water power

as in his judgment is the best and cheapest, necessary or convenient for the generation of electrical or other power and for the production of nitrates or other products needed for munitions of war and useful in the manufacture of fertilizers and other useful products.

The President is authorized to lease, purchase, or acquire, by condemnation, gift, grant, or devise, such lands and rights of way as may be necessary for the construction and operation of such plants, and to take from any lands of the United States, or to purchase or acquire by condemnation, materials, minerals, and processes, patented or otherwise, necessary for the construction and operation of such plants and for the manufacture of such products.

The products of such plants shall be used by the President for military and naval purposes to the extent that he may deem necessary, and any surplus which he shall determine is not required shall be sold and disposed of by him under such regulations as he may prescribe.

The President is hereby authorized and empowered to employ such officers, agents, or agencies as may in his discretion be necessary to enable him to carry out the purposes herein specified, and to authorize and require such officers, agents, or agencies to perform any and all of the duties imposed upon him by the provisions hereof.

The sum of \$20,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available until expended, to enable the President of the United States to carry out the purposes herein provided for.

The plant or plants provided for under this act shall be constructed and operated solely by the Government and not in conjunction with any other industry or enterprise carried on by private capital.

In order to raise the money appropriated by this act and necessary to carry its provisions into effect, the Secretary of the Treasury, upon the request of the President of the United States, may issue and sell, or use for such purpose or construction hereinabove authorized, any of the bonds of the United States now available in the Treasury of the United States under the act of August fifth, nineteen hundred and nine, the

act of February fourth, nineteen hundred and ten, and the act of March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed \$20,000,000: *Provided*, That any Panama Canal bonds issued and sold or used under the provisions of this section may be made payable at such time after issue as the Secretary of the Treasury, in his discretion, may deem advisable, and fix, instead of fifty years after date of issue, as in said act of August fifth, nineteen hundred and nine, not exceeding fifty years.

Under this power contained in section 124, President Wilson ordered construction to begin at Muscle Shoals by the erection of Dam No. 2, and its power house, and nitrate plants Nos. 1 and 2, for the fixation of atmospheric nitrogen, primarily for war purposes, and incidentally also for agricultural uses in time of peace.

SALVAGE VALUE OF WAR INVESTMENT

Unlike practically every other war project and war-time enterprise, this Muscle Shoals property has a great peace-time value for both agriculture and industry, in supplying both fertilizers and power, and also has a future value for national defense. In time of war our armies and fleets will use increasing quantities of nitrate explosives. Happily, the more we know about fixing nitrogen for agricultural purposes, the more rapidly we will be able to fix nitrogen for military purposes. The Muscle Shoals property is situated far inland, where it is unlikely, if not impossible, that enemy airplanes or airships may ever destroy it by bombing from the air. Plants situated within bombing distance of enemy airplane carriers are not dependable for war-time explosive supplies.

RECENT LEGISLATIVE HISTORY

Twice in recent years, once in 1928, and again in 1930, bills were passed by Congress and sent to the President for

his approval. Both those bills were very similar to the bill now reported favorably by your committee. And a large part of those bills was in the identical language of this bill. The bill passed in 1928 met a pocket veto by President Coolidge, and the bill passed in 1930 met a vigorous veto by President Hoover.

It is interesting to note some of the leading efforts to dispose of this long standing and much vexed question. The country is familiar with the efforts to lease by direct legislation to Henry Ford and to the American Cyanamid Co. Both of these efforts failed. But the country is not generally so familiar with the fact that on November 3, 1919, Senator Wadsworth, of New York, introduced a bill into the Senate, being S. 3390, which was reported favorably by the Committee on Agriculture. This bill proposed to organize a Government-owned corporation to operate the Muscle Shoals properties for the manufacture and sale of fertilizers in which the preference would be given to farmers.

On February 1, 1926, Senator Smith of South Carolina introduced into the Senate S. 2956, which provided for the creation of a Muscle Shoals Commission, and that this Commission should use the Muscle Shoals properties for the fixation of nitrogen to be sold for fertilizer purposes.

On April 19, 1926, Senator Deneen, of Illinois, introduced into the Senate a bill known as S. 4106, which sought to effectuate a lease of the Muscle Shoals properties to a corporation to be known as the Muscle Shoals Fertilizer Co. to manufacture fertilizer and to sell the same at cost plus 8 per cent.

On May 3, 1928, Representative Snell, of New York, introduced in the House, House Joint Resolution 2941, which proposed that the President, through the Secretary of War and the Chief of Engineers was authorized to contract for the sale of surplus power generated at Muscle Shoals, and to alter and repair nitrate plant no. 1 for the fixation of nitrogen and for the manufacture of fertilizers,

and to operate one unit of nitrogen plant no. 2 to determine whether or not fertilizers can be manufactured by that process at a cost favorably comparable with other processes, and to dispose of any fertilizer or fertilizers manufactured, and to enable the President to be in a position to consider all bids for the sale of power, the authority was expressly granted for the construction or lease of transmission lines in any direction from the dam and steam plant, either from appropriations made by the Congress or from funds from the sale of power.

In the Seventieth Congress Representative Morin of Pennsylvania, being chairman of the committee, introduced a bill which had been carefully prepared by a subcommittee appointed by him, and that bill set up a Government corporation for the sale of power and for the manufacture and sale of fertilizers. That bill was passed by the House of Representatives by striking out provisions requiring the manufacture of the complete fertilizer and limiting the activities of the Government corporation to nitrogenous plant food.

NATION-WIDE ASPECT OF PROBLEM

The increasing public interest in the Muscle Shoals situation has demonstrated how intimately it touches so many sides of life. But it is now manifest that the Muscle Shoals situation is only a factor and a part of the greater problems of conservation of natural resources, and of promoting navigation and flood relief. Obviously, the Muscle Shoals properties are only an integral part of the Tennessee Valley. In turn, the Tennessee Valley is merely typical of other regions in the Nation, whose treatment will ultimately be guided, either positively or negatively, by the lessons learned in the Tennessee Valley development program.

Accordingly, we are not surprised to find that President Roosevelt, in his language of April 10, 1933, in a message to Congress, vigorously expresses this central thought:

It is clear that the Muscle Shoals development is but a small part of the potential public usefulness of the entire Tennessee River. Such use, if envisioned in its entirety, transcends mere power development; it enters the wide fields of flood control, soil erosion, afforestation, elimination from agricultural use of marginal lands, and distribution and diversification of industry. In short, this power development of war days leads logically to national planning for a complete river watershed involving many States and the future lives and welfare of millions. It touches and gives life to all forms of human concerns.

In the minority views expressed by the maker of this report, in connection with the report by Representative Reece, of Tennessee, on S.J.Res. 49, in the second session of the Seventy-first Congress, this language was employed:

INDUSTRIAL RESULTS

But in the field of industry the results will surely be more marvelous and astonishing. The lessee will certainly find it advantageous to set up large establishments for the production of electrochemicals and ferro-alloys. In that section of the country are all the raw materials for the manufacture of chemicals and all steel products, at the same time numerous and valuable by-products will be manufactured. Furthermore, there are 11 valuable dam sites between the Cove Creek Dam and the Wilson Dam, and the construction of the Cove Creek Dam will double the power available at each one of these dam sites. Within the next generation perhaps all of the dams in that stretch of the river will be constructed and the power will be used not only at and near the dam, but will be sent in various directions to existing cities and towns and to new cities and towns within transmission distance.

Thus the 1,000,000 horsepower to be found along that 300-mile section of the Tennessee River from Cove Creek to Wilson Dam will become a great hive of industry. Perhaps millions of busy and industrious people will gather to use the electric energy there generated. New cities and towns will rise in places now unthought of. Many hundreds of millions of dollars

will be invested in new plants and in new enterprises, and proportionate profits will arise from these investments. From the day that earth is broken for the construction of the Cove Creek Dam, which will impound 3,000,000 acre-feet of water stretching over practically 60,000 acres, the largest artificial lake in the world, the eyes of the whole country will be turned upon that section and the footsteps of millions will be directed toward the Tennessee Valley. Agriculture in that section will thrive as never before, producing diversified crops and vegetables to feed the busy millions engaged in construction and in the conduct of industry. While such a picture dazzles the imagination, it is backed up by reason and human probability, and based upon the commanding influence of cheap power. Power is the secret of modern industry. Modern industry is the impelling force of modern civilization. In this Tennessee River Valley, so rich in the quantity and variety of mineral deposits, will spring up some of the greatest industrial activities of the world. With a magnificent climate, with a productive soil, with a strong and virile population to draw from in the surrounding States, with a people devoted to the ideals of our Republic and to the principles of our Constitution, resolved to maintain and preserve order and justice, that section presents a promise of future development and prosperity comparable to what has taken place in a commercial and financial way on Manhattan Island.

ECONOMIC AND INDUSTRIAL RESULTS

Let us take a glimpse into the future of what will probably be the result of wise and rational action by the leasing board. If the property is leased to a concern financially responsible which intends in good faith to carry out the purposes of the act, then I can envisage a marvelous development in the whole Tennessee River region and even in adjacent sections. The first and direct result will be the production of a cheap nitrogenous plant food which will demonstrate to the farmers and the business people of the United States, the actual cost of fixing nitrogen and of processing the same for use as fertilizer. Judging by numerous estimates made by experts, the reduction

will cut the present cost of nitrogen products from 25 to 40 percent. This should break the power of the Chilean nitrate trust which has extracted tribute from the world and especially from the farmers of the United States, merely because Chile has a monopoly upon mineral nitrate of soda. Two hundred and sixty-five million dollars has been paid into the public treasury of Chile as the export duty upon nitrate of soda exported to the United States alone. When to this is added the exports of nitrate of soda to other countries, especially prior to the World War, the total receipts by the Government of Chile for such export tax must amount to more than a billion dollars. Thus the people of Chile have shifted a large part of their tax burden upon the shoulders of the people of other nations, merely because they possess a natural monopoly in an essential commodity vitally important in both peace and war.

In the next place, to ascertain the actual cost of producing such synthetic nitrogen for agricultural purposes will help to crush the world-wide Nitrogen Trust. At present the world price of nitrogen follows along and barely below the price of Chilean nitrate. Thus a monopoly on mineral nitrogen and a monopoly on synthetic nitrogen go hand in hand. If the United States Government can help break this trust team and set the farmers of this country free, it will be one of the greatest blessings that agriculture has ever received.

Commencing with 10,000 tons of pure nitrogen, in such form and combination as the leasing board may specify and as the lessee may subsequently decide to be most attractive to the farmer, the volume of fertilizers produced will increase and will probably increase very rapidly. With the advantages given to the protection of agricultural nitrogen, it is my belief that the lessee will find production profitable to himself, and therefore will be induced to increase the annual quantity. In order to dispose of such increased quantity, very naturally the lessee will resort to the reasonable and proper business method of combining nitrogen with phosphoric acid and perhaps with potash. Phosphate rock is found in great abundance in the Tennessee River Basin. This can be floated

down the river and subjected to electric-furnace methods at the time of the year when cheap secondary power is available, and thus phosphoric acid produced more cheaply than it is being produced today by the wet process. Then probably the potash shales in that section of the country can be economically treated so as to extract the potash for agricultural purposes and leave valuable by-products of high commercial value.

FERTILIZER POSSIBILITIES

Much confusion has been created by hostile interests concerning the fertilizer question at Muscle Shoals. In that connection I quote a part of the minority views of Representative Harry E. Hull, Representative John N. Morin, Representative Harry C. Ransley, Representative John Philip Hill, Representative Louis A. Frothingham, and Representative J. Mayhew Wainwright, in the first session of the Sixty-eighth Congress:

The result is that it is now known that by taking advantage of modern scientific accomplishments and adding the benefit of hydroelectric power, it is possible to make atmospheric nitrogen available for the use of agriculture at low costs.

The production of phosphoric acid, another essential food plant, has also been the object of scientific research and development. Further advances are reasonably to be expected, but it is known that by using the modern methods of nitrogen fixation and combining the product with phosphoric acid produced by methods known to be commercially available, a fertilizer product of high fertilizing value can be made where hydroelectric power at low cost is available and sold to the farmers of the country at a substantial reduction below the price they now pay for equivalent plant food. Thus it has become certain that fertilizer production can be carried on at Muscle Shoals with profit, at the same time substantially reducing the cost of fertilizer to the farmer.

In the same connection, the same gentlemen, with reference to the possibility of selling power in the South, used the following language:

USE OF POWER IN THE SOUTH

A large amount of evidence was brought before the committee to show the widespread demand in the South for hydroelectric power and the concern which is felt in that section lest the Muscle Shoals power be entirely withdrawn from public service.

Taking the Ford obligation at its full value, to make 40,000 tons of fixed nitrogen per annum this requires less than 100,000 horsepower, yet his offer requires the Government to build power plants which, with the steam plants, will give him over 850,000 horsepower, or 750,000 horsepower more than is necessary to carry out his fertilizer obligation. It is this power which the public in many sections of the Southeastern States are demanding shall be distributed for general use.

Due to the electric transmission lines which are connected in the Southeastern States, it is now possible, according to the testimony, for the Muscle Shoals power to reach the public at points over 600 miles from Muscle Shoals.

VIEWS OF JOHN C. M'KENZIE

In the first session of the Sixty-eighth Congress, on February 2, 1924, Representative John C. McKenzie, on behalf of the Committee on Military Affairs, reported for the committee a bill recommending the acceptance of the Ford offer, and at the conclusion of his report used the following language:

FOUR FIELDS OF USEFULNESS AT MUSCLE SHOALS

The majority of the committee recognized that there are four distinct fields of usefulness in which valuable service can be had at Muscle Shoals: First, nitrate manufacture for national defense; second,

fertilizer production; third, power development; fourth, navigation improvement.

The first two are closely associated, and the plant that is most valuable for production of explosives in time of war is most efficient as a source of nitrates for fertilizer in time of peace. It is also true that under such a plan as Mr. Ford has proposed there is a close relation between the power development and the navigation improvement. Under this proposal the power not only returns a fair rate of interest on the cost of its development but it returns interest to the Government on its navigation improvement and provides a sinking fund which refunds to the Government its entire navigation investment. Merely by the use of its credit the Government can secure 150 miles of slack-water navigation on the Tennessee River and its tributaries without any appropriation whatever.

When it is realized that we have expended nearly \$20,000,000 on the improvement for navigation of the Tennessee River and its tributaries, outside of the present Muscle Shoals development, and practically one and a quarter billions of dollars on national river and harbor improvement as a whole, without the prospect or expectation of receiving any interest whatever on this huge outlay, or the return of any part of the principal, it is evident that here is a policy that is not merely of local interest at Muscle Shoals but that offers promise of Nation-wide benefits if adopted generally in the improvement of our navigable streams where power development is practicable.

FERTILIZERS IN PRESENT BILL

Broad powers are given to the Authority, either to operate the present plants, or to lease them, for the production of nitrogen and/or other fertilizer ingredients for agricultural uses. Specific and definite limitations are imposed as to the initial quantity to be produced and as to the gradual increase of the amount of production, according to market demands. All power necessary for ultimate capacity production of fertilizer and/or fertilizer ingredients is reserved.

FERTILIZER EXPERIMENTS

This feature of the bill is of very great importance. It contemplates extensive experiments in laboratories, and, in fact, the use of the entire nitrate plants as a huge laboratory, and also actual field demonstrations in the use of fertilizers of varying degrees of concentration and of varying proportions of constituents.

NATIONAL DEFENSE

Intimately interlocked with the production in peace of nitrogenous fertilizers is preparedness for national defense in time of war. But whether large-scale production of fertilizers is carried on at Muscle Shoals, we are assured that nitrate plant no. 2 will be maintained in stand-by condition for the manufacture of explosives, until Congress shall have by joint resolution released the Authority from that obligation. These sites should never be sold without express approval of Congress.

POWER FEATURES

The bill provides that all electric power not used in the navigation projects, and in the production of fertilizers, and in the conducting of fertilizer experiments, shall be sold, and in such sale preference shall be given to States, counties, municipalities, and nonprofit cooperative associations. Thirty-year contracts for power are permitted to States, counties, municipalities, and cooperative associations building their own transmission lines. But such contracts must stipulate that the power shall be sold and distributed without discrimination among customers of the same class. Private power companies employed in distribution and resale of electricity for profit must agree that the price at which they will sell power to the ultimate consumer will not exceed a figure found to be just, fair, and reasonable by the Federal Power Commission. The bills

which previously passed Congress contained a provision that contracts for the sale of power to private power-distributing companies might be canceled on 2 years' notice, if the power were demanded by the Authority, either for its own uses or for sale to States, counties, municipalities, and cooperative associations. The bill now reported has extended the time of notice to 5 years, and surely that is exceedingly fair to the power companies. That will give them ample time in which to construct power generating plants or to curtail their activities. Representatives of the power interests were urged to specify what length of time they thought would be fair and reasonable. Having declined to do this, the committee feels quite confident that 5 years is entirely generous to, and considerate of, the power companies.

TRANSMISSION LINES

Here has been the battle ground for all these long, laborious years. Surely the bill now recommended to the House is exceedingly just and liberal in this respect. In order to obviate the duplication of transmission lines, and thus prevent the waste or depreciation of invested capital, the board is authorized to negotiate with a private power company having a transmission line needed by the Authority, to enable it to serve the public, and to buy such transmission line at a fair and reasonable price. If negotiations fail, the Authority may acquire such transmission line by condemnation. But, of course, the full fair value of same will be paid. Thus, no new transmission line will probably be built, except where none now exists. The fear that much money might be wasted in duplicating existing transmission facilities has long been the cause of much opposition to the thought of transmission lines. Surely all ground for fear on this score has been removed. It is our hope and belief, from expressions uttered by the representatives of the power interests, that there will be cooperation in these respects, as in other respects, between the Authority and

the power interests in serving the public and in promoting the industrial, the agricultural, and the economic development in that region of the Nation.

COVE CREEK DAM

Everybody now agrees that the Cove Creek Dam should be built by the Government, and this includes even the representatives of the power companies themselves. It is indispensable to the final development of flood control, navigation, and power in the Tennessee Valley. This work should begin at once. Appropriations should be made so that the land may be acquired promptly, and the work of cleaning out the basin, of relocating roads and bridges and other structures, and of constructing the dam and the power house, should proceed promptly, and employ a great army of workers. Thus, the ranks of the unemployed will be thinned. Thus, the purchasing power of the people will be increased. Thus, the return of normal prosperity will be assisted.

CONDEMNATION PROCEEDINGS

Happily, we hear reports that the people of Tennessee, and especially of the Tennessee Valley part of that State, are organizing to insure cooperation with the Federal Government in its great program of development. However, we feel it necessary to provide special proceedings to govern condemnation of lands and other property rights, in order that there may be prompt taking of lands and at fair and reasonable prices. Aware of how selfish human nature sometimes asserts itself, we have sought to protect the Government against abuses and at the same time we have scrupulously guarded the rights of property owners by giving them jury trial on questions of fact and preserving the right of appeal on questions of law. Surely these provisions, certainly as to the purpose here sought to be accomplished, will meet with the approval of all.

OTHER DAMS ON BUSINESS BASIS

Cove Creek Dam and Dam No. 3 will be built as promptly as possible after the passage of this act. But after the construction of Cove Creek Dam and Dam No. 3, no other dam will be constructed unless there is a reasonable market demand for so much of the power as will yield a reasonable return on that part of the investment representing the cost of power production. This puts future power development upon a business basis.

In like manner, the Authority may enter into a contract with any responsible person, firm, or corporation, to lease a dam, or dams, upon self-liquidating terms to be approved by the President, insuring interest on the bonds and final amortization of the capital, and in such event the Authority may proceed to build any such dam. Surely these safety clauses should satisfy most of the objections to the general authorization for construction of future dams on the Tennessee River and its tributaries. The Authority cannot proceed upon a visionary and impractical program of construction. In addition to the limitations of law, there will be limitations of fact. The \$50,000,000 to be derived from the sale of bonds, will hardly go farther than build Cove Creek Dam, and Dam No. 3, and make the necessary alterations, to modernize the nitrate plants, to install the necessary fertilizer equipment and to provide adequate working capital. For every other dollar that the Authority may use for constructing dams, it must come to the Congress for appropriations. Thus, Congress holds the reins upon the Authority. It is true that the Authority will have the revenues from the sale of power, but after the required interest and amortization payments have been made by the Authority, and after the running expenses are paid, it is not likely that there will be any funds sufficient to build any dam. There may be sufficient funds to lease, or to buy, or to construct necessary transmission lines. But any sum of money sufficient to build a dam would have to come from Congress by appropriation.

BOND ISSUE AUTHORIZED

For this reason, the bond issue is limited to \$50,000,000. These bonds will be obligations of the United States, but to relieve them of being a direct charge upon the annual receipts of the Government, the interest on the bonds is made a lien upon the net proceeds of the sale of power, and from these net proceeds the Authority must pay the interest. If there be not sufficient net proceeds, undoubtedly Congress would be called upon through the Budget to appropriate sufficient money to pay the deficit.

USE OF PATENT RIGHTS

Much hysterical opposition has been expressed for several years to this feature of the bill. It is recklessly charged that it authorizes the confiscation and invasion of private property rights. Such argument entirely overlooks the fundamental principles involved. The monopoly of a patent right is a special privilege conferred by the Government. The inventor has no such monopoly by the law of nature, nor by the common law, but the Constitution of the United States authorizes the Congress to encourage inventions and discoveries by giving, for a limited period, a monopoly to the inventor or discoverer. But it has always been held by the Congress and the courts that the sovereign which confers to one citizen such exclusive right, as against all other citizens, itself has certain rights in the monopoly privilege. It would be a strange situation for a government to confer such right of monopoly, and then, in the hour of the government's necessity, find itself held at bay by the monopolist. This reservation of right to the Government is analogous to the right of eminent domain. It is inherent in sovereignty itself.

Therefore, it is not surprising that we find the general law of the United States expressed in the United States Code, in title 35, section 68, that the United States can use

any invention for which a patent has been issued, and that the sole and exclusive remedy for any claim of damages by the owner of the patent shall be a suit in the United States Court of Claims. But no such right to bring such suit belongs to a person who made the invention while in the employ of the United States. This law was enacted June 25, 1910, and the section of the pending bill is merely a declaration that the Authority is the agent of the United States in carrying out its constitutional powers.

NO SPOILS SYSTEM POSSIBLE

To relieve the board of the importunities of friends and relatives seeking jobs with the Authority, the board shall select only its limited clerical staff, and all other officers, agents, and employees will be selected by the general manager. The general manager will undoubtedly be a man of wide experience and of strong character. He is directed to set up merit and efficiency standards and systems. All employees will have the benefits of the United States Civil Service Employees' Compensation Act.

In like manner all agents, employees, and laborers will be entitled to have the Secretary of Labor settle any dispute arising concerning wages. The prevailing rate of wages, as it is defined in the act, will be the measure of wages paid. This same principle will apply to employees and laborers working for contractors upon projects under contracts with the Authority. But as further guaranty against the employment of unfit and incompetent persons it is provided that no political tests shall ever be applied by any member of the board in connection with the employment of any person nor by the manager nor anybody acting for him. Any person violating this provision will be summarily discharged.

AID FROM OTHER FEDERAL DEPARTMENTS

The President is authorized to detail any officer or agent of the United States to assist the Authority in carry-

ing on its program of development. Thus, we can envision a very considerable employment of the Corps of Engineers of the United States Army, and of the experts from the Bureau of Chemistry and Soils in the Department of Agriculture. Also, in the final reforestation and soil-erosion plans of the Authority, representatives of the Department of the Interior will surely be detailed to help. Possibly other departments of the Government will be drafted from time to time to assist in this work.

PLANNING FOR FUTURE DEVELOPMENT

The board of three members should not only be sound and experienced men of affairs, they should not only be soundly educated and widely traveled and well-read men, but they should be men of constructive vision, to seek to fit the future into the form of the present. Therefore, the board is charged with the duty of constantly studying the whole situation presented by the Tennessee River Valley, and the adjoining territory, with the view of encouraging and guiding in the orderly and balanced development of the diverse and rich resources of that section. It is a great responsibility imposed upon the members of the board. But it is a great opportunity that will come to those chosen for this great service. For such position of trust and responsibility, undoubtedly the President will search the Nation over for the right men to whom to entrust not only this vast investment of money but this great responsibility, not only to the people of that section of the country but to the people of the whole Nation. If, through the incapacity or the indifference of the members of the board, this great humanitarian project should fail, then progress along this line in other parts of the country will be set back for two or three generations.

With such a responsibility upon the President in choosing the right men, and with such a responsibility resting upon the consciences of the men thus chosen, we cannot believe that there will be failure. When the race advances,

it must do so along the road of faith in ourselves and our fellows. The members of the board are given the term of 9 years, so there may be consistency and continuity in the policies of the Authority.

CONSERVATION POLICIES

The policy of this bill for the development of the Tennessee Valley is no new policy in American politics. For more than 20 years the conservation of our natural resources and their preservation for the use and benefit of all the people to whom they belong, both by the law of the land and the law of nature, has been a burning issue in this Nation. Beginning with the year 1912, the Democratic Party, by its platform, proclaimed:

CONSERVATION

We believe in the conservation and the development, for the use of all the people, of the natural resources of the country. Our forests, our sources of water supply, our arable and our mineral lands, our navigable streams, and all the other material resources with which our country has been so lavishly endowed, constitute the foundation of our national wealth. Such additional legislation as may be necessary to prevent their being wasted or absorbed by special or privileged interests should be enacted and the policy of their conservation should be rigidly adhered to.

In 1912 the Progressive Party, headed by Theodore Roosevelt, by its platform proclaimed its solemn determination that these natural sources of wealth, belonging to all the people, should be held in public hands and utilized for the general welfare:

CONSERVATION

The natural resources of the Nation must be promptly developed and generally used to support the people's needs, but we cannot safely allow them to be

wasted, exploited, monopolized or controlled against the general good. . . .

We believe that the remaining forests, coal and oil lands, water-power sites, and other natural resources, still in State or National control (except agricultural lands) are more likely to be wisely conserved and utilized for the general welfare if held in the public hands.

In the year 1916 the Democratic Party reiterated its position with renewed emphasis:

CONSERVATION

For the safeguarding and quickening of the life of our own people, we favor the conservation and development of the natural resources of the country through a policy which shall be positive rather than negative, a policy which shall not withhold such resources from development but which, while permitting and encouraging their use, shall prevent both waste and monopoly in their exploitation, and we earnestly favor the passage of acts which will accomplish these objects, reaffirming the declaration of the platform of 1912 on this subject.

That same year the Republican Party, following, rather timidly, in the wake of the Progressive Party, now reunited with the mother party, proclaimed its attitude in the following words:

CONSERVATION

We believe in a careful husbandry of all the natural resources of the Nation—a husbandry which means development without waste; use without abuse.

In 1920 post-war problems, with all their dislocating consequences, seemed to have crowded out of the Democratic Party any expression upon this subject. But the Republican Party in that year, 1920, took stronger ground on the question in the following language:

CONSERVATION

Conservation is a Republican policy. It began with the passage of the reclamation act signed by President Roosevelt. The recent passage of the coal, oil, and phosphate leasing act by a Republican Congress and the enactment of the water-power bill, fashioned in accordance with the same principle, are consistent landmarks in the development of the conservation of our national resources. We denounce the refusal of the President to sign the water-power bill passed after 10 years of controversy.

But in 1924 the Democratic Party returned to the subject with specific and definite commitments, as follows:

MUSCLE SHOALS AND FERTILIZERS

We reaffirm and pledge the fulfillment of the policy, with reference to Muscle Shoals, as declared and passed by the Democratic majority of the Sixty-fourth Congress in the National Defense Act of 1916, "for the production of nitrates or other products needed for munitions of war and useful in the manufacture of fertilizers."

We hold that the production of cheaper and higher-grade fertilizers is essential to agricultural prosperity. We demand prompt action by Congress for the operation of the Muscle Shoals plants to maximum capacity in the production, distribution, and sale of commercial fertilizers to the farmers of the country, and we oppose any legislation that limits the production of fertilizers at Muscle Shoals by limiting the amount of power to be used in their manufacture.

Again the Democratic Party in 1924 pledged itself to the retention by the public of the title to the Nation's water power:

CONSERVATION

We believe that the Nation should retain title to its water power and we favor the expeditious creation and development of our water power.

In 1924 the Republican Party took still stronger ground in declaring that such natural wealth as water power belonged to all the people, and is an inheritance to be transmitted to future generations, and employed the following language:

CONSERVATION

The natural resources of the country belong to all the people and are a part of an estate belonging to generations yet unborn. The Government policy should be to safeguard, develop, and utilize these possessions. The conservation policy of the Nation originated with the Republican Party under the inspiration of Theodore Roosevelt. We hold it a privilege of the Republican Party to build as a memorial to him on the foundation which he laid.

In 1928 the Democratic Party reiterated in still stronger language its conviction that all the people should benefit from our natural resources, and stated its position as follows:

WATER POWER, WATERWAYS, AND FLOOD CONTROL

The Federal Government and State governments, respectively, now have absolute and exclusive sovereignty and control over enormous water powers, which constitute one of the greatest assets of the Nation. This sovereign title and control must be preserved, respectively, in the State and Federal Governments to the end that the people may be protected against exploitation of this great resource and that water powers may be expeditiously developed under such regulations as will insure to the people reasonable rates and equitable distribution.

In 1928 the Republican Party asserted its priority to the claim of leadership in the development of our public water powers for the public benefit, and employed the following language:

CONSERVATION

The Republican Party has been forehanded in assuring the development of water power in accordance with public interest. A policy of permanent public retention of the power sites on public land and power privileges in domestic and international navigable streams and one third of the potential water-power resources in the United States on public domain has been assured by the Federal Water Power Act, passed by a Republican Congress.

In 1932 the Democratic Party spoke briefly but emphatically on all questions, and pledged the present administration to the development of natural resources in the common interest by using the following language:

The conservation, development, and use of the Nation's water power in the public interest:

The removal of Government from all fields of private enterprise except where necessary to develop public works and natural resources of the common interest.

In 1932 the Republican Party declared that all our natural resources should be set free from monopoly control, and again praised the splendid leadership in this field of Theodore Roosevelt. It employed the following language:

CONSERVATION

The wise use of all natural resources freed from monopolistic control is a Republican policy initiated by Theodore Roosevelt. The Roosevelt, Coolidge, and Hoover reclamation projects bear witness to the continuation of that policy. Forestry and all other conservation activities have been supported and enlarged.

When both great political parties, through a period of 20 years, have spoken so unequivocally and emphatically upon a great public question, it leaves no doubt as to where the sentiment of the masses of the people is upon this

question. These repeated utterances were not intended to be mere soothing sounds. The American public had a right, and still has a right, to believe that both these great political parties were sincere in their pledges. Now is the time for the representatives of both these organized bodies of citizens, called political parties, to begin in a definite and efficient way the accomplishment of the aims so long promised to the people. It so happens that this preservation of nature's rich gifts to all the people must begin somewhere. Under the peculiar situation confronting us for about 15 years with reference to a great war project placed at Muscle Shoals, this Nation-wide program must commence in the Tennessee River Valley with the Muscle Shoals properties as a nucleus. The Tennessee River as a great interstate highway, and fortunately the project now contemplated serves the fourfold causes of national defense, flood control, navigation, and power conservation.

When this Tennessee Valley development shall have progressed sufficiently for us to learn great lessons as to how best to serve the public, then development will follow in other great interstate and international water courses. Undoubtedly, there are several great areas in all sections of the country that will ultimately be developed by the application of the same principles and policies. It is the simple, fundamental American, Jeffersonian, Rooseveltian proposition of preserving and using for all the people those great sources of wealth conferred by the prolific hand of God upon the masses of the people who settled in this new continent, cleared its fields, opened its mines, navigated its rivers, built its cities, highways, and railroads, established its independence by their sacrifices and sufferings, have maintained its independence in war, and defended its honor at home and abroad, at the peril of their lives. In fact, millions have suffered in war, and many more millions have sacrificed and struggled in peace, throughout our 150 years, to bring this Nation where it is. Something is due these voiceless millions, and more is due to the unborn millions.

By this measure for the development of the Tennessee Valley, we, the representatives of the dead, of the living, and of the unborn, are fulfilling our pledges to them all, and seeking to make real the fundamental principle of popular government, that of the greatest good to the greatest number.

If the views expressed so often for 20 years by both great political parties, representing fully 95 percent of our whole population be socialistic, then we must suffer the stigma, because we cannot escape from our platform pledges. Why be frightened by adjectives? Increasing cooperation marks the progress of civilization.

MINORITY VIEWS.

The undersigned members of the Committee on Military Affairs of the House of Representatives are unable to approve of H. R. 5081, entitled "A bill to provide for the common defense; to aid interstate commerce by navigation; to provide flood control; to promote the general welfare by creating the Tennessee Valley Authority; to operate the Muscle Shoals properties, and to encourage agricultural, industrial, and economic development", in the form in which it is presented to the House because, in our opinion, it fails adequately to carry out the purposes of section 124 of the National Defense Act under whose provisions the Wilson Dam and the nitrate plants at Muscle Shoals were constructed, because it compels the Government to engage in the production and sale of power and fertilizer in competition with its citizens, and because it commits the United States to a program so vastly sweeping, yet so vague in its extent, that it threatens dangerously to increase the bonded indebtedness of the Nation to a point of impairing its credit.

The section of the National Defense Act cited reads, in part, as follows:—

The President of the United States is hereby authorized and empowered to make, or cause to be made, such investigation as in his judgment is necessary to determine the best, cheapest, and most available means

for the production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers and other useful products.

For this reason all legislation relating to Muscle Shoals has always been referred to the Committee on Military Affairs of the House. In the amended Hill bill, H. R. 5081, we are able to discover very little provision for national defense, and in a similar bill before the Senate there is none whatever. The only direct mention of this in the present Hill bill appears in subsection h of section 5, to wit:

It shall be the duty of the board to maintain in stand-by condition nitrate plant numbered 2, or its equivalent, for the fixation of atmospheric nitrogen, for the production of explosives in the event of war or a national emergency, until Congress shall by joint resolution release the board from this obligation.

It is our view that this grants inadequate attention to the primary purposes of the Muscle Shoals development and that the bill as a whole vitiates the original intentions of the National Defense Act.

If fertilizer is manufactured in commercial quantities it would interfere with the business of more than 800 companies employing thousands of men and which have, according to the testimony of a representative of the National Fertilizer Association, encountered a loss of business since 1921 estimated at more than \$300,000,000, owing to overproduction and lowering of prices. According to a report authorized by resolution of the Seventy-second Congress, the United States Government is at present in competition with private enterprise in 41 lines of activity. We believe that this tendency must be checked in the interest of business recovery.

We are opposed to Government operation of Muscle Shoals for the production of power for retail sale. At the present time 30 percent of the generating capacity of privately owned plants serving the States within transmis-

sion distance of Muscle Shoals is finding no market. This 30 percent amounts to a surplus capacity of approximately 400,000 horsepower. Yet the bill provides for the construction of Cove Creek Dam, Dam No. 2, and steam plant no. 2 which, when completed, would generate an additional 400,000 horsepower, making a total surplus in the vicinity of 800,000 horsepower.

The undersigned cannot visualize a market for this great additional power, particularly when one considers the financial condition of the country at this time.

Section 13 of the bill authorizes the board, with the approval of the President, to construct, lease, or authorize the construction of transmission lines within transmission distance not to exceed 400 miles from the place where generated if transmission lines are found economically justified and necessary under the provisions of the act.

If this provision is carried out, it might parallel existing transmission lines to the ultimate destruction of existing companies, with a consequent loss of bona fide investments in the amount of approximately \$400,000,000, a great part of which is held by consumer customers and other citizens of the six Southern States. The Government would be seizing a market now their valuable property, and now served, according to competent testimony, adequately and at reasonable rates.

While the Hill bill, in section 24, provides that the board, acting for the Authority, is authorized and empowered to issue and sell bonds not exceeding \$50,000,000 in amount, there is a similar bill now before the Senate which provides, in section 15, as follows:

In the construction of any future dam, steam plant, or other facility, to be used in whole or in part for the generation of hydroelectric power, the board, if directed so to do by the President of the United States, shall issue its bonds for the payment in part or in full of that part of said development that is allocated to the production of hydroelectric power.

Under section 22 of the amended Hill bill, H. R. 5081, the President for 1 year from the date of the enactment of this act is authorized and empowered to enter into negotiations and to conclude agreements with any person, firm, or corporation for the exchange of electric energy generated and to be generated by the Authority in consideration of the conveyance by any such person, firm, or corporation of any property or property rights on which the Authority may construct a plant or plants for the production of electric energy, upon such terms, conditions, and limitations as the President shall deem "meet and proper".

There was no evidence introduced before the committee, either in public hearing or executive session, as to what is contemplated by this section.

Section 29 provides that all appropriations necessary to carry out the provisions of this act are hereby authorized. This project has been conservatively estimated as considerably in excess of \$1,000,000,000.

It is the opinion of the minority that any additional appropriations needed will be obtained through the issuance of bonds rather than coming back to Congress for such additional appropriations. Thus while sacrifices are being made to balance the Budget, the public debt may be increased to an unlimited and potentially disastrous extent.

Section 27 provides, among other things, that it is "to aid further the proper use, conservation, and development of the natural resources of the Tennessee River Drainage Basin and of such adjoining territory as may be related to or materially affected by the developments consequent to this act".

There was no testimony given before the committee, either at public hearings or in executive session, as to what is contemplated by this language.

The same section further reads:

To provide for the general welfare of the citizens of said areas.

There was no testimony given before the committee, either at public hearings or in executive session, as to what is contemplated by this language.

The same section also provides:

The President is hereby authorized by such means or methods as he may deem proper within the limits of appropriations made therefor by Congress, to make such surveys of and general plans for said Tennessee River Basin and adjoining territory as may be useful to the Congress and to the several States in guiding and controlling the extent, sequence, and nature of development that may be equitably and economically advanced through the expenditure of public funds.

There was no testimony given before the committee, either at public hearings or in executive session, as to what is contemplated by this language, especially as to what extent it might involve Government funds.

The same section went further and states this is—

All for the general purpose of fostering an orderly and proper physical, economic, and social development of said areas.

There was no testimony given before the committee, either at public hearings or in executive session, as to what is contemplated by this language.

The same section gives the President—

In making said surveys and plans to cooperate with the States affected thereby.

No testimony was offered before the committee, either at public hearings or in executive session, as to what is contemplated by this language.

Section 28 of the amended Hill bill states:

The President shall, from time to time, as the work provided for in this act progresses, recommend to Congress such legislation as he deems proper to carry

out the general purposes stated in said section and for the especial purpose of bringing about in said Tennessee Drainage Basin and adjoining territory in conformity with said general purposes (1) the maximum amount of flood control and for navigation purposes.

Which in the opinion of the minority is the limit of governmental jurisdiction.

Yet, section 28 also provides for the maximum generation of electric power consistent with flood control and navigation and for such items as the following:

(1) The proper use of marginal lands.

There was no testimony offered before the committee, either in public hearings or in executive session, to show what is contemplated by this language:

(2) The proper method for reforestation of all lands in said drainage basin suitable for reforestation.

There was no testimony offered before the committee, either in public hearings or executive session, to show what is contemplated by this language:

(3) The most practical method of improving agricultural conditions in the valleys of said drainage basin.

There was no testimony offered before the committee, either in public hearings or in executive session, to show what is contemplated by this language:

(4) The economic and social well-being of the people living in said river basin and all adjacent territory.

There was no testimony offered before the committee, either in public hearing or executive session, to show what is contemplated by this language.

Flood control and navigation are matters which naturally come under the direction of the Army engineers and

at no time during the hearings on this bill were any of the Army engineers called before the committee to testify on any of these matters. Neither were there any communications from the Secretary of War, or anyone connected with the Department of War, sent to the committee on this subject.

We feel that if the President has a definite program with reference to items numbered 1, 2, 3, and 4, above, the committee should have had the benefit of the experience and knowledge of the heads of the various departments affected or members of their respective staffs.

It will be seen that the bill effectually conceals its real purposes and aims and commits the country to the expenditure of vast sums of money, the amount of which can only be imagined, and, at a time when agriculture and industry are prostrate and our citizens staggering under the burden of governmental debts, even though this gigantic project will probably be financed by the sale of Government bonds—thereby adding to our large national debt.

HARRY C. RANSLEY.

T. C. COCHRAN.

E. W. GOSS.

VINCENT CARTER.

W. G. ANDREWS.

DONALD H. McLEAN.

SECTION C**EXCERPTS FROM PERTINENT APPROPRIATION
ACTS AND COMMITTEE REPORTS**

The following pages contain copies of those parts of the annual appropriation acts which deal with the Tennessee Valley Authority.

In addition, whenever parts of the reports of the Appropriation Committees of the House or Senate or of the conference reports on the appropriation measures have discussed the provisions for the Tennessee Valley Authority, copies of those parts have been set out immediately following the particular appropriation law to which they relate.

ACT OF JUNE 16, 1933

**FOURTH DEFICIENCY ACT, FISCAL YEAR 1933
(H.R. 6034), PUBLIC, No. 77, 73d CONGRESS, 1st SESSION (48 STAT. 274):**

**NATIONAL INDUSTRIAL RECOVERY AND
TENNESSEE VALLEY AUTHORITY**

For the purpose of carrying into effect the provisions of the Act entitled "An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", approved June 16, 1933, and also for the purpose of carrying into effect the provisions of the Act entitled "An Act for the relief of unemployment through the performance of useful public work, and for other purposes", approved March 31, 1933, and for each and every object thereof, to be expended in the discretion and under the direction of the President, to be immediately available, and except as hereinafter provided to remain available until June 30, 1935, \$3,300,000,000; of which not to exceed \$50,000,000 shall be available to the board of directors of the Tennessee Valley Authority, and to

remain available until expended, for the purpose of carrying out the provisions of the Act of Congress entitled "The Tennessee Valley Authority Act of 1933", approved May 18, 1933, including the acquisition of necessary land, the clearing of such land, relocation of highways, and the construction and/or purchase of transmission lines and other facilities, the construction of the Cove Creek Dam and powerhouse and all other necessary works authorized by said Act, and for printing and binding, law books, books of reference, newspapers, periodicals, purchase, maintenance and operation of passenger-carrying vehicles, rents in the District of Columbia and elsewhere and all necessary salaries and expenses connected with the organization, operation, and investigations of the Tennessee Valley Authority, including reimbursements for any expenses prior to the enactment of this appropriation incurred at the direction of the President [48 Stat. at 275].

ACT OF JUNE 19, 1934

EMERGENCY APPROPRIATION ACT, FISCAL YEAR 1935 (H.R. 9830), PUBLIC, No. 412, 73d CONGRESS, 2d SESSION (48 STAT. 1021):

EXECUTIVE

For an additional amount for carrying out the purposes of the Act entitled "An Act for the relief of unemployment through the performance of useful public work, and for other purposes", approved March 31, 1933 (48 Stat. 22); the Federal Emergency Relief Act of 1933, approved May 12, 1933 (48 Stat. 55); the Tennessee Valley Authority Act of 1933, approved May 18, 1933 (48 Stat. 58); and the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195); and including \$325,000 for an addition to the Executive Office Building and for the furnishings and equipment thereof; \$899,675,000, to be allocated by the President for further carrying out the purposes of the aforesaid Acts and to remain available until June 30, 1935: *Provided*, That not exceeding \$500,000,000 in the aggregate of any savings or unobligated balances in funds of the Reconstruction Finance Corporation may, in the discretion of the President, be transferred and applied to the purposes of the Federal Emergency Relief Act of 1933 and/or title II of the National Industrial Recovery Act, and any unobligated balances in appropriations (including allocations of appropriations) of the Federal Emergency Administration of Public Works may, in the discretion of the President, be transferred and applied to the purposes of such Federal Emergency Relief Act of 1933: *Provided further*, That the amounts to be made available under the authority of this paragraph for public works under the National Industrial Recovery Act shall not exceed in the aggregate \$500,000,000 [48 Stat. at 1055-1056].

ACT OF AUGUST 12, 1935

SECOND DEFICIENCY APPROPRIATION ACT, FISCAL YEAR 1935 (H.R. 8554), PUBLIC, No. 260, 74th CONGRESS, 1st SESSION (49 STAT. 571):

TENNESSEE VALLEY AUTHORITY

For the purpose of carrying out the provisions of the Act entitled "The Tennessee Valley Authority Act of 1933", approved May 18, 1933 (48 Stat. 58), including the continued construction of Norris Dam, Wheeler Dam, Pickwick Landing Dam, and the beginning of construction on a dam at or near Guntersville, Alabama, and a dam at or near Chickamauga Creek, both on the Tennessee River, and a dam on the Hiwassee River, a tributary of the Tennessee River, at or near Fowlers Bend, and the continuation of preliminary investigations as to the location and desirability of a dam at or near Aurora Landing and a dam at or near Whites Creek, and the acquisition of necessary land, the clearing of such land, relocation of highways, and the construction or purchase of transmission lines and other facilities, and all other necessary works authorized by said Act, and for printing and binding, law books, books of reference, newspapers, periodicals, purchase, maintenance, and operation of passenger-carrying vehicles, rents in the District of Columbia and elsewhere, and all necessary salaries and expenses connected with the organization, operation, and investigations of the Tennessee Valley Authority, \$36,000,000: *Provided*, That this appropriation and all appropriations, allotments, and other funds made available heretofore to the Tennessee Valley Authority, including any unexpended balances remaining from the appropriation of \$50,000,000 made to the Tennessee Valley Authority by the Fourth Deficiency Act, fiscal year 1933, the allocation of \$25,000,000 made to the Tennessee Valley Authority under the Emergency Appropriation Act, fiscal year 1935, and the receipts of the Tennessee Valley Authority from all sources, except as limited by section 26 of the Tennessee Valley Authority Act approved May 18, 1933 (48 Stat. 58), shall be covered into and accounted for as

one fund to be known as the "Tennessee Valley Authority Fund" and shall remain available until June 30, 1936: *Provided further*, That not to exceed \$1,000,000 shall be expended on the dam on the Hiwassee River [49 Stat. at 596-597].

Report (No. 1261) of Committee on Appropriations, House of Representatives, 74th Congress, 1st Session, June 19, 1935, on H.R. 8554, Second Deficiency Appropriation Bill, fiscal year 1935:

"Tennessee Valley Authority.—The amount recommended for the Tennessee Valley Authority is \$34,675,192, which is \$15,324,808 less than the \$50,000,000 allocation under the \$300,000,000 general item. In connection with this reduction it is fair to state that the T. V. A. when appearing before the committee suggested a reduction in their estimate from \$50,000,000 to \$42,305,192 and this latter sum was the subject of the committee's consideration in making the appropriation. From this latter amount the committee has made a further reduction of \$7,630,000. The estimate of \$50,000,000 also contemplated the use of an anticipated unobligated balance on June 30, 1935, of \$10,624,338.

"The T. V. A. has previously received an appropriation of \$50,000,000 from Congress and an allotment of \$25,000,000 by the President from emergency appropriations made for the current fiscal year. This \$75,000,000 plus the amount in this bill bring their total appropriation to \$109,675,192. While the amount allowed for 1936 is \$34,675,192, the T. V. A. estimates there will be on hand on June 30, 1935, an unobligated balance from previous funds of \$10,624,338, making the amount to be available for obligation in the fiscal year 1936, \$45,299,530.

"In making the reduction of \$7,630,000 in the program submitted by the T. V. A. in the revised estimates found on pages 475 and 476 of the hearings, the committee has approved the items as appearing in that statement for the fiscal year 1936 under the navigation and flood-control program for completion of Norris Dam and Reservoir and Wheeler Dam and Reservoir, for continuation of work on the Pickwick Landing Dam and Reservoir, for commencement of work on two main river-dam projects, namely, the

Guntersville Dam and the Chickamauga Dam, and the continuation of the general investigations of water resources of the Tennessee Basin, but postponed commencement of Hiwassee Dam. This postponement, together with reductions in other classes of contemplated expenditures, accounts for the \$7,630,000 of reduction in the estimate.

"The committee has been advised by the T. V. A. that no purchases of transmission lines and other facilities are contemplated from this appropriation and no funds except approximately \$215,000 are included in the estimates that would be affected by pending litigation. The \$215,000 referred to is a part of the \$7,630,000 which the committee has eliminated. If the litigation is decided favorably to the T. V. A. and this sum ultimately is to be expended as planned in Alabama, it can be provided at the coming session of Congress if it is not susceptible of being financed from funds then in hand.

"In providing for commencement of construction of the Guntersville Dam, at an estimated total cost of \$17,000,000, and the Chickamauga Dam, at an estimated total cost of \$15,000,000, and the postponement of the Hiwassee Dam which is estimated to cost \$12,000,000, the committee is actuated by a desire to provide the projects in the program which seem to them to be most beneficial to flood control and navigation. The navigation program of the Tennessee River ultimately contemplates a 9-foot channel from the confluence of the Tennessee and the Ohio Rivers at Paducah, Ky., to Knoxville, Tenn. The construction of the Guntersville Dam will provide a 7-foot channel from Paducah to Chattanooga. The Chickamauga Dam will be of assistance in providing a 7-foot channel for about 70 miles above Chattanooga, but the main benefit to accrue from the Chickamauga Dam is in flood control. The city of Chattanooga sustains a very large proportion of the estimated average total annual damage from floods in the Tennessee Basin. Both the Guntersville and Chickamauga Dams are susceptible of power development, but such installations are not contemplated until there is a need for its generation. The Aurora Dam on the main river just above Paducah is considered essential to a 9-foot channel. At the present time its practicability has not been determined due to uncertain foundation conditions existing in that region. It has a place in the ultimate program but not during the fiscal year 1936.

"The net revenues of the T. V. A. from the electricity program available for interest, amortization, construction, and other purposes are estimated for the fiscal year 1936 at \$713,000. However, in arriving at this sum there are gross revenues of \$342,000 through charges to other T. V. A. activities for electricity to be furnished, so that only approximately half of the \$713,000 is actual net income. Pending litigation, particularly that involving the situation at Knoxville, has served very materially to lessen the anticipated revenues from the sale of electricity and is responsible for the relatively small showing on the revenue side. Figures placed in the hearings show a very great increase in the consumption of electricity when it is made available to users at the reasonable T. V. A. rates. The experience of greatly increased use resulting from lower rates which has occurred in other communities has been found to repeat itself in the Tennessee Valley.

"The committee has made such investigation of the purposes of the T. V. A. through its hearings as time would permit. There has been criticism of the Board for some of its action under the Tennessee Valley Authority Act. The law under which T. V. A. is operating is broad and requires the members of the Board to believe in the purposes and policies expressed in it.

"The committee believes the Board to be sincere and earnest in endeavoring to carry out the law. The future of the T. V. A. in some of its power aspects is involved in litigation pending in the appellate courts. Irrespective of the outcome of that litigation, the other primary purposes of the act, such as navigation, flood control, national defense, fertilizer experimentation, and agricultural and regional development, constitute a broad field. The amount recommended in this bill, as revised by the T. V. A. from its original figures and as curtailed by action of the committee, form a logical and more moderate program than was contemplated under earlier estimates. In postponing the Hiwassee Dam project and curtailing some of the other estimates, the committee believes that under the funds provided for the fiscal year 1936 ample progress can be made upon the purposes of the Tennessee Valley Authority Act. Hiwassee Dam has a part in navigation, flood control, and power development; but in the judgment of the committee, it is not essential this year" (pp. 10-12).

Report (No. 1085) of Committee on Appropriations, Senate, 74th Congress, 1st Session, July 15, 1935, on H.R. 8554, Second Deficiency Appropriation Bill, fiscal year 1935:

"The changes in the amounts of the House Bill recommended by the committee are as follows:

"INCREASES RECOMMENDED BY COMMITTEE

• • •

"TENNESSEE VALLEY AUTHORITY

"It is recommended by the committee that the following be inserted in the bill:

• • • the continued construction of Norris Dam, Wheeler Dam, Pickwick Landing Dam, and the beginning of construction on a dam at or near Gunter'sville, Alabama, and a dam at or near Chickamauga Creek, both on the Tennessee River, and a dam on the Hiwassee River, a tributary of the Tennessee River, at or near Fowlers Bend, and the continuation of preliminary investigations as to the location and desirability of a dam at or near Aurora Landing, a dam at or near Whites Creek, and • • • *Provided further, That not to exceed \$1,000,000 shall be expended on the dams on the Hiwassee River* • • •

"The appropriation is increased from \$34,675,192, as proposed by the House to \$38,000,000—an increase of \$3,324,808.00" (pp. 1-11).

Conference Report (H.Rept. 1715), 74th Congress, 1st Session, August 6, 1935, on H.R. 8554, Second Deficiency Appropriation Bill, fiscal year 1935:

"Amendments nos. 78, 79, and 80, relating to the Tennessee Valley Authority: Inserts the specification of projects proposed by the Senate modified so as to make clear that the specification of the Aurora Landing project and the Whites Creek project include only preliminary investigations as to each; appropriates \$36,000,000 instead of \$38,000,000 as proposed by the Senate and \$34,675,192 as proposed by the House; and limits expenditures on the Hiwassee Dam to \$1,000,000 instead of to '\$1,000,000 exclusive of the purchase of overflowed land', as proposed by the Senate" (p. 8).

ACT OF JUNE 22, 1936

FIRST DEFICIENCY APPROPRIATION ACT, FISCAL YEAR 1936 (H.R. 12624), PUBLIC, No. 739, 74th CONGRESS, 2d SESSION (49 STAT. 1597):

TENNESSEE VALLEY AUTHORITY

For the purpose of carrying out the provisions of the Act entitled "The Tennessee Valley Authority Act of 1933", approved May 18, 1933 (U.S.C., title 16, ch. 12a) as amended by the Act approved August 31, 1935 (49 Stat., 1075-1081), including the continued construction of Norris Dam, Wheeler Dam, Pickwick Landing Dam, Gunterville Dam, and Chickamauga Dam and the beginning of construction on a dam on the Hiwassee River, a tributary of the Tennessee River, at or near Fowler Bend, and the continuation of preliminary investigations as to the appropriate location and type of a dam on the lower Tennessee River, and the acquisition of necessary land, the clearing of such land, relocation of highways, and the construction or purchase of transmission lines and other facilities, and all other necessary works authorized by such Acts, and for printing and binding, law books, books of reference, newspapers, periodical, purchase, maintenance, and operation of passenger-carrying vehicles, rents in the District of Columbia and elsewhere, and all necessary salaries and expenses connected with the organization, operation, and investigations of the Tennessee Valley Authority, fiscal year 1937, \$39,900,000: *Provided*, That this appropriation and any unexpended balance on June 30, 1936, in the "Tennessee Valley Authority Fund, 1936", and the receipts of the Tennessee Valley Authority from all sources during the fiscal year 1937 (except as limited by section 26 of the Tennessee Valley Authority Act of 1933, as amended), shall be covered into and accounted for as one fund to be known as the "Tennessee Valley Authority Fund, 1937", to remain available until June 30, 1937, and to be available for the payment of obligations chargeable against the "Tennessee Valley Authority Fund, 1936" [49 Stat. at 1607].

Report (No. 2591) of Committee on Appropriations, House of Representatives, 74th Congress, 2d Session, May 7, 1936, on H.R. 12624, First Deficiency Appropriation Bill, fiscal year 1936:

"TENNESSEE VALLEY AUTHORITY

"The Budget for the fiscal year 1937, pages 83 and 84, contains an estimate of \$43,000,000 for the Tennessee Valley Authority for the coming fiscal year. This sum, together with an estimated unobligated balance of \$1,217,816 on June 30, 1936, made a total request for obligation for the fiscal year 1937 of \$44,217,816, exclusive of net revenues from electricity. The committee has reduced the Budget estimate of \$43,000,000 to \$39,900,000, which sum with the unexpended balance will make available for obligation, exclusive of electricity revenues, a total for the fiscal year 1937 of \$41,117,816. This is a reduction in the requested appropriation of \$3,100,000. The amount of \$41,117,816 provides for the following construction and other general classes of work of the Authority:

Purpose	1936 allo- cation	1937 allo- cation	Approved by committee
Flood control and navigation:			
Wilson Dam and Reservoir.....	\$75,514	\$39,000	\$39,000
Norris Dam and Reservoir.....	13,969,557	573,000	573,000
Wheeler Dam and Reservoir.....	15,441,661	1,336,000	1,336,000
Pickwick Landing Dam and Reservoir.....	8,972,959	10,716,716	10,716,716
Hiwassee Dam and Reservoir.....	1,000,060	3,337,228	3,337,228
Guntersville Dam and Reservoir.....	2,375,024	8,006,372	8,006,372
McReynolds Dam and Reservoir.....	2,490,866	5,563,000	5,563,000
Surveys and investigations, other main river dams.....	550,000	720,000	650,000
Surveys and investigations, tributary dams.....	317,349	250,000	.....
Engineering investigations, land plan- ning surveys, reforestation, malaria control, economic investigations in connection with navigation, and flood control.....	609,944	882,500	500,000
General maps and map records.....	752,830	775,000	400,000
Total, navigation and flood control...	<u>46,555,704</u>	<u>32,198,816</u>	<u>31,121,316</u>
Electricity program—gross.....	6,222,662	7,125,000	7,125,000
Less net receipts from operations.....	608,097	1,500,000	1,500,000
Net chargeable to appropriation.....	<u>5,614,565</u>	<u>5,625,000</u>	<u>5,625,000</u>
National defense.....	581,602	1,360,000	360,000
Fertilizer and agricultural development..	3,749,154	4,484,000	3,732,000
Regional studies, experiments, and dem- onstrations.....	461,588	450,000	225,000
Other undistributed expenditures.....	<u>1,300,000</u>	<u>100,000</u>	<u>54,500</u>
Grand total.....	<u>\$58,262,613</u>	<u>\$44,217,816</u>	<u>\$41,117,816</u>

"The amount to be available for the next year's operations on an obligation basis, if the committee's recommendations are approved, represents a reduction from \$58,262,613 for the fiscal year 1936 to \$41,117,816, or a decrease of \$17,144,797.

"From the foregoing table it will be noted that the committee has allowed the full amount estimated for the

construction of dams and reservoirs in connection with flood control and navigation. The construction projects have all previously been passed upon by Congress for appropriation and are all under construction with the exception of the Hiwassee Dam and Reservoir for which a commencement appropriation of \$1,000,000 was made the last session of Congress. In connection with flood control and navigation, the committee has eliminated the estimate of \$70,000 under surveys and investigations of other main river dams requested for the proposed location of dams at Watts Bar and Coulter Shoals on the upper Tennessee River and has included \$650,000 for such investigations in connection with a proposed dam and reservoir on the lower Tennessee River. There has also been eliminated the estimate of \$250,000 for surveys and investigations incident to the proposed location of other dams on the tributaries of the Tennessee River.

"The committee has also eliminated from the request of the Authority the provision which would make it possible for the Authority to determine whether to construct the dam on the Hiwassee River or, as an alternate project, a dam on the Little Tennessee River near Fontana, N. C., and has provided for proceeding with the Hiwassee Dam.

"A provision is also inserted changing the name of the Chickamauga Dam to that of "McReynolds Dam" in honor of Representative McReynolds of Tennessee in whose district the dam is located. The committee makes this recommendation in recognition of Mr. McReynolds long-standing interest in and earnest advocacy of the development of the Tennessee Valley and the regulation and improvement of the Tennessee River and its tributaries.

"The estimate for the allocation covering engineering investigations, land-planning surveys, reforestation, malaria control and sanitation, and economic investigations in connection with navigation and flood control is reduced from \$882,500 to \$500,000, a sum which is \$109,944 less than the estimated allocation for this purpose for the current fiscal year, but \$45,000 more than the expenditures for the same purpose in the fiscal year 1935.

"The amount for the general mapping program is reduced from \$775,000 to \$400,000 in the belief that it is not necessary to proceed as rapidly with this class of work as the Authority has been undertaking to do.

"The committee has cut from \$450,000 to \$225,000 the amount requested for regional studies, experiments, and

demonstrations. This appropriation covers a wide range of projects on which there has been proportionately too large an expenditure of funds consistent with the primary purpose for which the Authority was established.

"The committee has allowed the full amount of the appropriation of \$5,625,000 for the development of the electricity program. This amount is estimated to be augmented by net revenues from operations of \$1,500,000, making available a total of \$7,125,000 for the electricity program. The principal portion of this sum is for transmission lines to reach markets for the sale of electricity which will result in the production of additional revenue.

"The net revenues from operations of the electricity program, which are expendable for interest, amortization, construction, and so forth, in connection with that program, are estimated to increase from \$608,097 for 1936 to \$1,500,000 for the fiscal year 1937. These latter sums are not included in the total of the gross figures for appropriations and allocations for the entire T. V. A., program because of their direct applicability to the electrical program.

"The amount recommended for fertilizer manufacture and demonstrations in the use of fertilizer is \$3,732,000. While this amount is \$752,000 less than the allocation requested in the estimates, it is approximately the same amount that is being expended for such purposes in the current fiscal year. Fertilizer is not being manufactured for general distribution or sale. It is being utilized in conducting experiments and demonstrations in the use and application of the products developed by the T. V. A. and the committee feels that such studies can be carried on advantageously and with great benefit to agriculture generally with the amount of the current appropriation.

"A general item of undistributed expense in the requested amount of \$100,000 has been reduced to \$54,500.

"The amount for the national defense program is recommended at \$360,000, which is \$1,000,000 less than the estimated allocation. The amount for mineral investigations is left at \$100,000 instead of \$200,000 as requested by the Authority. The sum granted is the same as the allocation for the current year. From this request the committee has also eliminated the estimate of \$900,000 submitted for placing in operating readiness and putting in stand-by condition, the ammonium nitrate portion of nitrate plant no. 2. This is the first time that an estimate

for this purpose has been presented although provided for in section 5 (g) of the Tennessee Valley Authority Act and the committee was not satisfied at this time of the advisability and necessity of making the investment. It believes that further cooperative study can profitably be given to the project, both on the part of the War Department and the Tennessee Valley Authority, without in any wise jeopardizing our preparedness for national defense.

"A provision is inserted establishing the Tennessee Valley Authority fund, 1937. This fund will consist of the unexpended balance in the Tennessee Valley Authority fund, 1936, created at the last session, plus receipts in the fiscal year 1937 (except as restricted by sec. 26 of the Tennessee Valley Authority Act as amended), and plus the appropriation carried in this bill. The practical effect of the provision is to carry forward and merge with the appropriation in this bill the balances in previous appropriations together with the receipts and make the new fund available until June 30, 1937, for discharging obligations outstanding against the Tennessee Valley Authority fund, 1936, and for the purposes of new obligations in the fiscal year 1937. The fund has decided accounting advantages and will in nowise affect such control over appropriations for the Tennessee Valley Authority as Congress now possesses under existing law" (pp. 12-15).

Report (No. 2108) of Committee on Appropriations, Senate, 74th Congress, 2d Session, May 27, 1936, on H.R. 12624, First Deficiency Appropriation Bill, fiscal year 1936:

"The changes in the amounts of the House bill recommended by the committee are as follows:

"INCREASE

• • •

"TENNESSEE VALLEY AUTHORITY:

"Construction, including a dam at or near Gilbertsville, Ky., and a dam at or near Watts Bar, Tenn.\$ 1,200,000.00

"The committee recommends that the name of Chickamauga Dam be not changed to McReynolds Dam.

"It is also recommended that the following language be stricken from the bill: 'and the continuation of preliminary investigations as to the appropriate location and type of a dam on the lower Tennessee River'" (pp. 1, 3).

Conference Report (H.Rept. 3013), 74th Congress, 2d Session, June 17, 1936, on H.R. 12624, First Deficiency Appropriation Bill, fiscal year 1936:

"Amendment no. 28, relating to the Tennessee Valley Authority: Strikes out, as proposed by the Senate, the language of the House bill changing the name of the Chickamauga Dam" (p. 10).

ACT OF MAY 28, 1937

SECOND DEFICIENCY APPROPRIATION ACT, FISCAL YEAR 1937 (H.R. 6730), PUBLIC, No. 121, 75th CONGRESS, 1st SESSION (50 Stat. 213):

TENNESSEE VALLEY AUTHORITY

For the purpose of carrying out the provisions of the Act entitled "The Tennessee Valley Authority Act of 1933", approved May 18, 1933 (U.S.C., title 16, ch. 12a), as amended by the Act approved August 31, 1935 (49 Stat., 1075-1081), including the continued construction of Pickwick Landing Dam, Guntersville Dam, Chickamauga Dam, and Hiwassee Dam, and for construction of a dam at or near Gilbertsville, Kentucky, and for preliminary investigations of sites for dams at or near Watts Bar and at or near Coulter's Site on the Tennessee River, Tennessee, and the acquisition of necessary land, the clearing of such land, relocation of highways, and the construction or purchase of transmission lines and other facilities, and all other necessary works authorized by such Acts, and for printing and binding, law books, books of reference, newspapers, periodicals, purchase, maintenance, and operation of passenger-carrying vehicles, rents in the District of Columbia and elsewhere, and all necessary salaries and expenses connected with the organization, operation, and investigations of the Tennessee Valley Authority, and for examination of estimates of appropriations and activities in the field, fiscal year 1938, \$40,166,270: *Provided*, That this appropriation and any unexpended balance on June 30, 1937, in the "Tennessee Valley Authority fund, 1937", and the receipts of the Tennessee Valley Authority from all sources during the fiscal year 1938 (except as limited by section 26 of the Tennessee Valley Authority Act of 1933, as amended), shall be covered into and accounted for as one fund to be known as the "Tennessee Valley Authority fund, 1938", to remain available until June 30, 1938, and to be available for the payment of obligations chargeable against the "Tennessee

Valley Authority fund, 1937": *Provided further*, That in addition to the amount herein appropriated, the Tennessee Valley Authority is hereby authorized to incur obligations and enter into contracts for the procurement of equipment to be installed in dams and power-houses in an amount not in excess of \$4,000,000, and this action shall be deemed a contractual obligation of the Tennessee Valley Authority and the United States for payment of the cost thereof [50 Stat. at 217].

Report (No. 699) of Committee on Appropriations, House of Representatives, 75th Congress, 1st Session, April 28, 1937, on H.R. 6730, Second Deficiency Appropriation Bill, fiscal year 1937:

"TENNESSEE VALLEY AUTHORITY

"The appropriations for the Tennessee Valley Authority appear in this bill, instead of a regular annual appropriation bill, through an assignment of the work of the committee made by former Chairman Buchanan.

"The Budget estimates are found on page 113 of the Budget for the fiscal year 1938, transmitted to Congress in January last. The amount requested is \$43,000,000, in direct appropriation and in addition authority to enter into contracts subject to future appropriations in the amount of \$5,500,000, making a total of obligating privilege requested by the Authority for the fiscal year 1938 of \$48,500,000.

"The committee recommendations comprise a direct appropriation of \$40,166,270 and a contract authorization of \$4,000,000, making a total to be available for obligation of \$44,166,270. This sum represents a reduction in the total requested of \$4,333,730, consisting of \$2,833,730 reduction in the direct appropriation and \$1,500,000 reduction in the amount of the contract authorization.

"The amount available for obligation in the current fiscal year is \$48,690,702 consisting of \$39,900,000 of direct appropriation for such fiscal year and an unobligated balance of \$8,790,702 carried forward from the fiscal year 1936.

"The total amount to be available for obligation in the fiscal year 1938 under this bill, \$44,166,270, compared with the amount available for obligation in the fiscal year 1937, \$48,690,702, shows a decrease of \$4,524,432.

"The following tabulation is a comparative statement by projects and classes of work of the estimated obligations for the fiscal year 1937, the budget recommendation for obligation for the fiscal year 1938, the amounts approved by the committee, and the increases or decreases between the committee's approvals and the budget estimates and the 1937 amounts:

COMPARISON OF ESTIMATED OBLIGATIONS

PURPOSE	Estimated Obligations Fiscal Year 1937	Estimated Obligations Fiscal Year 1938	Amounts of The Estimated 1938 Obligations Approved By The Committee	Increase (†) Or Decrease (—), Amount Approved By The Committee Compared With Estimated 1937 Obligations	Increase (†) Or Decrease (—), Amount Approved By The Committee Compared With Estimated 1938 Obligations
General investigations projects:					
General water-control investigations....	\$ 283,198	\$ 408,626	\$ 283,198	.....	—\$125,428
Preliminary projects investigations:					
Gilbertsville, Ky., dam.....	656,383	742,439	742,439	†\$ 86,056	.....
Watts Bar, Tenn., dam.....	.....	216,628	.....	.....	—216,628
Couiter Shoals Dam, Tenn.....	4,074	230,532	.....	.....	—230,532
Other tributary dam projects.....	.....	382,450	.....	.....	—382,450
Electricity research and development....	226,567	216,200	216,200	—10,367	.....
General mapping and map records.....	452,262	318,500	318,500	—133,762	.....
Total general investigations.....	\$1,622,484	\$2,515,375	\$1,560,337	—\$ 62,147	—\$955,038
Structures and improvements:					
Wilson Dam and Reservoirs, additions and betterments.....	\$ 45,000	\$ 135,000	\$ 135,000	†\$ 90,000	.....
Norris Dam and Reservoir:					
Original project.....	1,403,366	130,399	130,399	—1,272,967	.....
Additions and betterments.....	220,985	73,149	73,149	—147,836	.....
Wheeler Dam and Reservoir:					
Original project.....	2,161,823	137,264	137,264	—2,024,559	.....
Additions and betterments.....	197,485	51,903	51,903	—145,582	.....
Pickwick Landing, Hiwassee, Guntersville, and Chickamauga, Dams and reser- voirs, continuation.....	31,854,431	38,197,032	35,062,182	†3,207,751	—3,134,850
Total, structures and improvements.	\$35,883,090	\$38,724,747	\$35,589,897	—\$293,193	—\$3,134,850
Electrical program:					
Electrical plant and equipment (transmis- sion lines, substations, and distribu- tion properties).....	\$3,375,000	\$5,100,000	\$5,100,000	—\$ 275,000	.....
Electricity operating expenses and deduc- tions.....	1,548,639	1,795,302	1,795,302	†246,663	.....
Total plant, equipment, and opera- tions.....	6,923,639	6,895,302	6,895,302	—28,337	.....
Less estimated electricity revenues.....	1,821,000	3,775,000	3,775,000	†1,954,000	.....
Net chargeable to appropriations....	\$5,102,639	\$3,120,302	\$3,120,302	—\$1,982,337	.....
Fertilizer and soil conservation program...	\$ 3,897,402	\$3,506,600	\$ 3,445,000	—\$ 452,402	—\$ 61,600
National-defense program.....	319,774	225,734	200,734	—119,040	—25,000
Regional studies, experiments, and demon- strations.....	273,231	357,242	200,000	—73,231	—157,242
Undistributed expenses.....	1,592,082	50,000	50,000	—1,542,082	.....
Grand total obligations.....	\$48,690,702	\$48,500,000	\$44,166,270	—\$4,524,432	—\$4,333,730
Method of financing estimated obligations:					
Direct appropriations..... ¹	\$48,690,702	\$43,000,000	\$40,166,270	—\$8,524,432	—\$2,833,730
Contract authorization in addition to di- rect appropriation.....	.....	5,500,000	4,000,000	†4,000,000	—1,500,000
Grand total obligations..... ¹	\$48,690,702	\$48,500,000	\$44,166,270	—\$4,524,432	—\$4,333,730

¹—Consists of \$39,900,000 appropriated for the fiscal year 1937 and \$8,790,702 carried forward unobligated from the fiscal year 1936.

"The committee has denied the increase of \$125,428 for general water control investigations, leaving the amount at the current appropriation of \$283,198.

"An increase of \$86,056 is allowed for continued investigation of the type and location of a dam on the lower Tennessee River in the vicinity of Gilbertsville, Ky., the amount for such purpose being increased from \$656,383 of estimated obligation for the current year to \$742,439 for the next fiscal year. In connection with this project the committee was urged to include provision in the bill of a small amount for commencement of construction of the project. The Gilbertsville Dam and Reservoir are presently estimated to cost \$112,000,000. It is an important project in the program for unified control of the Tennessee River and its influence upon control of floods on the Ohio and the Mississippi. No Budget estimate was included for commencement of actual work and the committee was advised that the project would not be ready for construction for another year. The committee felt that inasmuch as there was contemplated to be expended for the fiscal year 1938 approximately \$750,000 for continued investigation that it was not wise to include any funds for actual commencement until full and complete investigation of all phases had been completed. The preliminary data concerning the project indicate a dam 8,300 feet long with a maximum lock lift of 68 feet and a reservoir 184 miles long with a normal area of 148,000 acres.

"The committee has also rejected requested Budget allocations of \$216,628 and \$230,532 for further investigation of dams on the upper Tennessee River at Watts Bar and Coulter Shoals, respectively, both in Tennessee, and has also disallowed the sum of \$382,450 for preliminary investigations of possible sites for dams and reservoirs on the major tributaries of the Tennessee River—the French Broad, the Holston, and Little Tennessee—and upon the Duck and Elk Rivers, minor tributaries, in connection with the possibilities of navigation for the transportation of phosphate rock.

"Under the heading of structure and improvements there is made available an allocation for obligation of \$35,589,987, which is \$293,193 less than the current year's estimated obligations and \$3,134,850 less than the requested allocations for the next fiscal year. This latter sum

consists of \$1,500,000 of contract authorization and \$1,634,850 of direct appropriation. An increase of \$90,000 is indicated for additions and betterments at Wilson Dam. Decreases of considerable size are shown for the Norris and Wheeler Dam projects due to completion of construction.

"Four major projects on the main river are now in process of construction—Guntersville Dam and Reservoir, Alabama; Hiwassee Dam and Reservoir, North Carolina; and Pickwick Landing Dam and Reservoir and Chickamauga Dam and Reservoir, both in Tennessee. The amount recommended for these four projects is \$35,062,182 as against \$31,854,431 for the current year, an increase of \$3,207,751, and \$3,134,850 less than the budgeted allocation for the fiscal year 1938. The decrease of \$3,134,850 consists of \$1,634,850 decrease in the direct appropriation and \$1,500,000 reduction in the amount requested in the contract authorization for these four projects. By the end of the current fiscal year it is estimated that Pickwick Landing project will be 75 percent completed, the Guntersville project 33 percent completed, and the Hiwassee and Chickamauga projects each 25 percent completed.

"For electrical plant and equipment, which comprises additional transmission lines, substations, and investment in distribution properties, the allocation is approved in the amount of \$5,100,000, which is \$275,000 less than the current figure. The lines and stations proposed to be established are to be selected from a list of desired extensions set forth in the hearings and totaling approximately \$8,500,000.

"The operating expenses in connection with sale of electricity are expected to increase from \$1,548,639 to \$1,795,302, or by \$246,663. As against this increase in expense, revenues from the sale of electricity are expected to increase from \$1,821,000 for 1937 to \$3,775,000, or in the sum of \$1,954,000. This difference between estimated operating expense and estimated revenue produces an excess of revenue for 1938 of \$1,979,698 which will be available to apply against the estimated cost of the navigation, flood control, and hydroelectric program for 1938 and has been taken into consideration in framing the 1938 Budget request for appropriations.

"The committee has included \$3,445,000 for the fertilizer and soil conservation program which is the amount of sug-

gested budget allocation less \$61,600. This reduction is effected by reducing from \$138,600 to \$75,000, the sum suggested for research and development in farm equipment. The committee believes that too large a sum was proposed to be expended for this type of investigation in proportion to the other projects of the Authority.

"The amount for the national defense program is approved in the sum of \$200,734, which is \$119,040 less than the current allotment and \$25,000 under the budget figure. In this instance the proposed allotment for mineral investigations is reduced from \$50,000 to \$25,000.

"The entire allocation for regional studies, experiments, and demonstrations is decreased from the Budget figure of \$357,242 to \$200,000, a cut of \$157,242 under the estimates and \$73,231 under the current allotment. The committee has made this decrease in the belief that while most of these investigations are desirable in connection with the social aspects of the development of the valley and the improvement of the condition of a segment of its population, they may proceed at a lower financial level for the entire group. If special emphasis needs to be stressed for some particular phase of the work the Board may decide to drop some investigation entirely and concentrate the funds on some more important aspect.

"The allocation for undistributed expense is set at the Budget figure of \$50,000 which is a decrease of \$1,542,082 under the current amount.

"In the decrease of \$2,833,730 in the direct appropriation and \$1,500,000 in the contract authorization the committee does not indicate any hostility to the purpose and intent of the Tennessee Valley Authority Act. They do believe that the work can be carried on in the coming fiscal year with the funds allowed and with suitable progress in the several lines of endeavor by the exercise of proper economy and curtailment of unnecessary expenditure. In making this decrease the committee has also in mind that there was an unallotted balance of approximately \$500,000 in the Authority's funds as of a recent date and there is also a fund of \$1,000,000 which the Authority has reserved as a continuing fund derived from revenues for emergency expenses and to insure continuous operation.

"In indicating approval of various allocations as submitted in connection with the 1938 estimates, the commit-

tee wishes it understood that should the Authority feel that it is necessary to divert some of those amounts to the construction of Gunter'sville, Pickwick Landing, Hiwassee, and Chickamauga projects there is that flexibility in the funds.

"If the amounts made available in this bill are approved, there will have been available to the Authority for obligation, from appropriations and revenues, a total to June 30, 1938, of approximately \$196,000,000. The program of the Authority, as outlined to the committee at the last session, indicated a total cost of all projects and development of \$479,000,000. The total cost as revised at the present session is \$520,000,000" (pp. 2-6).

Report (No. 527) of Committee on Appropriations, Senate, 75th Congress, 1st Session, May 10, 1937, on H.R. 6730, Second Deficiency Appropriation Bill, fiscal year 1937:

"The changes in the amounts of the House bill recommended by the committee are as follows:

. . .

"DECREASE

"Tennessee Valley Authority \$4,000,000.00

"It is recommended by the committee that the following language be stricken from the bill:

and the continuation of preliminary investigations as to the appropriate location and type of a dam on the lower Tennessee River

and the following inserted in lieu thereof:

and for construction of a dam at or near Gilbertsville, Kentucky, and for preliminary investigations of sites for dams at or near Watts Bar and at or near Coulter's Site on the Tennessee River, Tennessee.

"It is recommended by the committee that the following language be included in the bill:

Provided further, That in addition to the amount herein appropriated, the Tennessee Valley Authority is hereby authorized to incur obligations and enter into contracts for the procurement of equipment to be installed in dams and power-houses in an amount not in excess of \$4,000,000, and this action shall be deemed a contractual obligation of the Tennessee Valley Authority and the United States for payment of the cost thereof" (pp. 1-3).

Conference Report (H.Rept. 835), 75th Congress, 1st Session, May 19, 1937, on H.R. 6730, Second Deficiency Appropriation Bill, fiscal year 1937:

"Amendments nos. 8 and 9, relating to the Tennessee Valley Authority: Appropriates \$40,166,270, as proposed by the Senate, instead of \$44,166,270, as proposed by the House, and inserts the language, proposed by the Senate, for commencement of construction of the dam at or near Gilbertsville, Ky., and for preliminary investigations of sites for dams at or near Watts bar and at or near Coulter Shoals, both in Tennessee. In connection with the reduction of \$4,000,000 in direct appropriation by Senate amendment no. 9, the managers on the part of the House report in disagreement Senate amendment no. 10, a contract authorization of \$4,000,000 stricken from the bill in the House, in which concurrence will be recommended to replace the reduction of \$4,000,000 of direct appropriation above referred to" (p. 3).

ACT OF AUGUST 25, 1937

THIRD DEFICIENCY APPROPRIATION ACT, FISCAL YEAR 1937 (H.R. 8245), PUBLIC, No. 354, 75th CONGRESS, 1st SESSION (50 Stat. 755):

TENNESSEE VALLEY AUTHORITY

Tennessee Valley Authority Fund: The appropriation under this head for the fiscal year 1938, contained in the Second Deficiency Appropriation Act, fiscal year 1937, shall, in addition to the objects specified under that head, be available for the reconstruction and relocation of the George Sam Houston Bridge across the Tennessee River at Guntersville, Alabama [50 Stat. at 759].

ACT OF MAY 23, 1938

INDEPENDENT OFFICES APPROPRIATION ACT, FISCAL YEAR 1939 (H.R. 8837), PUBLIC, No. 534, 75th CONGRESS, 3d SESSION:

TENNESSEE VALLEY AUTHORITY

For the purpose of carrying out the provisions of the Act entitled "The Tennessee Valley Authority Act of 1933", approved May 18, 1933 (16 U. S. C. ch. 12a), as amended by the Act approved August 31, 1935 (49 Stat. 1075-1081), including the continued construction of Pickwick Landing Dam, Guntersville Dam, Chickamauga Dam, and Hiwassee Dam, and for construction of a dam at or near Gilbertsville, Kentucky, and for preliminary investigations of sites for dams at or near Watts Bar and at or near Coulter Shoals on the Tennessee River, Tennessee, and the acquisition of necessary land, the clearing of such land, relocation of highways, and the construction or purchase of transmission lines and other facilities, and all other necessary works

authorized by such Acts, and for printing and binding, law books, books of reference, newspapers, periodicals, purchase, maintenance, and operation of passenger-carrying vehicles, rents in the District of Columbia and elsewhere, and all necessary salaries and expenses connected with the organization, operation, and investigations of the Tennessee Valley Authority, and for examination of estimates of appropriations and activities in the field, fiscal year 1939, \$40,000,000: Provided, That this appropriation and any unexpended balance on June 30, 1938, in the "Tennessee Valley Authority fund, 1938", and the receipts of the Tennessee Valley Authority from all sources during the fiscal year 1939 (except as limited by section 26 of the Tennessee Valley Authority Act of 1933, as amended), shall be covered into and accounted for as one fund to be known as the "Tennessee Valley Authority fund, 1939", to remain available until June 30, 1939, and to be available for the payment of obligations chargeable against the "Tennessee Valley Authority fund, 1938" and for contractual obligations for the procurement of equipment as authorized in the Second Deficiency Appropriation Act, fiscal year 1937: Provided further, That in addition to the amount herein appropriated, the Tennessee Valley Authority is hereby authorized to incur obligations and enter into contracts for the procurement of equipment to be installed in dams and power-houses in an amount not in excess of \$4,000,000, and this action shall be deemed a contractual obligation of the Tennessee Valley Authority and the United States for payment of the cost thereof [p. 20].

Report (No. 1662) of Committee on Appropriations, House of Representatives, 75th Congress, 3d Session, January 6, 1938, on H.R. 8837, Independent Offices Appropriation Bill, fiscal year 1939:

"TENNESSEE VALLEY AUTHORITY

"The amount of the 1938 appropriation for the Tennessee Valley Authority is \$40,166,270, plus a contractual authorization of \$4,000,000. The Budget estimate for 1939 is \$40,000,000 and a contractual authorization of \$4,000,000. The accompanying bill provides \$37,087,000 for 1939 and includes the requested authority to contract.

"The amount in the bill is \$3,079,270 less than the 1938 appropriation and is a reduction under the Budget of \$2,913,000.

"*Gilbertsville Dam.*—The committee has applied \$2,613,000 of the cut to the Gilbertsville Dam, for which there was allotted \$2,898,000 of which \$185,000 was set up for "project investigations" the remainder being for construction on the dam and various other items incident to such construction. The committee has eliminated all items incident to construction and has allowed an increase of \$100,000, or a total of \$285,000, for "project investigations."

"*Fertilizer and soil conservation program.*—The committee has applied the remaining \$300,000 of the reduction to certain items under the fertilizer and soil conservation program, as follows:

Item	Amount estimated	Amount of reduction
Chemical engineering research and experimentation	\$350,000	\$100,000
Controlled soil and fertilizer investigations	200,000	50,000
Research and development of farm equipment	125,000	75,000
Reforestation and erosion control.	225,000	75,000"

(pp. 13-14)

Report (No. 1303) of Committee on Appropriations, Senate, 75th Congress, 3d Session, January 17, 1938, on H.R. 8837, Independent Offices Appropriation Bill, fiscal year 1939:

"The changes in the amounts of the House bill recommended by the committee are as follows:

"INCREASE

"TENNESSEE VALLEY AUTHORITY

"To carry out the provisions of the 'Tennessee Valley Authority Act of 1933'.....\$2,763,000

"It is recommended by the committee that the following language be inserted in the bill:

and for construction of a dam at or near
Gilbertsville, Kentucky

"Total increase \$2,763,000"
(p. 2).

Conference Report (H.Rept. 1906), 75th Congress, 1st Session, March 7, 1938, on H.R. 8837, Independent Offices Appropriation Bill, fiscal year 1939:

"IN DISAGREEMENT

. . .

"Amendments Nos. 26 and 27, Tennessee Valley Authority: Restores the House cut of \$2,613,000 for the beginning of the construction of a dam at or near Gilbertsville, Ky., where the House had provided \$285,000 for further study of the project only; and restores the House cut of \$100,000 for chemical-engineering research and experimentation, and the House cut of \$50,000 for soil and fertilizer investigations—a total restoration by the Senate of \$2,763,000.

. . .

"Amendment No. 37, relating to certain employees compensated at the rate of \$5,000 or more per annum: The amendment is as follows:

Sec. 6. No part of any appropriation contained in this Act or authorized hereby to be expended shall be used to pay the compensation of any experts or attorneys under any independent establishment, except the Tennessee Valley Authority, of the Government of the United States (except persons now in the employ of the Government and persons heretofore or hereafter appointed under the civil-service laws), the rate of which is \$5,000 or more per annum, who shall not have been appointed by the President, by and with the advice and consent of the Senate."

(pp. 5-6)

Conference Report (H.Rept. 2222), 75th Congress, 3d Session, April 25, 1938, on Appropriations for Executive Office and Sundry Independent Executive Bureaus, Boards, Commissions, and Offices, fiscal year 1939:

"The amendments in controversy are as follows:

• • •

"Amendments Nos. 26 and 27: Relating to construction of the Gilbertsville Dam under the Tennessee Valley Authority.

• • •

"Amendment No. 37: Relating to Presidential appointment and Senate confirmation of certain experts or attorneys receiving compensation of \$5,000 or more per annum under appropriations made in the bill or authorized thereby to be expended" (p. 2).

Conference Report (H.Rept. 2379), 75th Congress, 3d Session, May 19, 1938, on Appropriations for the Executive Office and Sundry Independent Executive Bureaus, Boards, Commissions, and Offices, fiscal year ending June 30, 1939.

“Amendment No. 37, relating to certain employees compensated at the rate of \$5,000 or more per annum: Strikes from the bill the following provision inserted by the Senate:

Sec. 6. No part of any appropriation contained in this Act or authorized hereby to be expended shall be used to pay the compensation of any experts or attorneys under any independent establishment, except the Tennessee Valley Authority, of the Government of the United States (except persons now in the employ of the Government and persons heretofore or hereafter appointed under the civil-service laws), the rate of which is \$5,000 or more per annum, who shall not have been appointed by the President, by and with the advice and consent of the Senate.”

(p. 2)

SECTION D**HISTORICAL ORIGINS OF CERTAIN FEDERAL
POLICIES RELATING TO CONSERVATION
OF WATER RESOURCES****1. *Multiple-purpose Projects***

1901, Message of President Theodore Roosevelt to the 57th Congress, 1st session, emphasizing reservoirs as a measure of flood control:

The forests alone cannot, however, fully regulate and and conserve the waters of the arid region. Great storage works are necessary to equalize the flow of streams and to save the flood waters. Their construction has been conclusively shown to be an undertaking too vast for private effort. Nor can it be best accomplished by the individual States acting alone. Far-reaching interstate problems are involved; and the resources of single States would often be inadequate. It is properly a national function, at least in some of its features. It is as right for the National Government to make the streams and rivers of the arid region useful by engineering works for water storage as to make useful the rivers and harbors of the humid region by engineering works of another kind. The storing of the floods in reservoirs at the headwaters of our rivers is but an enlargement of our present policy of river control, under which levees are built on the lower reaches of the same streams.

The Government should construct and maintain these reservoirs as it does other public works. Where their purpose is to regulate the flow of streams the water should be turned freely into the channels in the dry season to take the same course under the same laws as the natural flow [35 Cong. Rec. 86].

1908, Message of President Theodore Roosevelt transmitting preliminary report of the Inland Waterways Commission, S.Doc. 325, 60th Cong., 1st sess.:

The report rests throughout on the fundamental conception that every waterway should be made to serve

the people as largely and in as many different ways as possible. It is poor business to develop a river for navigation in such a way as to prevent its use for power, when by a little foresight it could be made to serve both purposes. We can not afford needlessly to sacrifice power to irrigation, or irrigation to domestic water supply, when by taking thought we may have all three. Every stream should be used to the utmost. No stream can be so used unless such use is planned for in advance. When such plans are made we shall find that, instead of interfering, one use can often be made to assist another. Each river system, from its headwaters in the forest to its mouth on the coast, is a single unit and should be treated as such. Navigation of the lower reaches of a stream can not be fully developed without the control of floods and low waters by storage and drainage. Navigable channels are directly concerned with the protection of source waters and with soil erosion, which takes the materials for bars and shoals from the richest portions of our farms. The uses of a stream for domestic and municipal water supply, for power, and in many cases for irrigation, must also be taken into full account [p. iv].

1908, *Preliminary Report of the Inland Waterways Commission*, S.Doc. 325, 60th Cong., 1st sess.:

13. Locks and certain other works designed to improve navigation commonly produce head and store water in such manner as to develop power available for industrial purposes, while works designed to develop power on navigable and source streams affect the navigation and other uses of river systems; and these uses must necessarily be considered together. Information concerning water power in the several States and sections is incomplete, yet it is known to be a vast and intrinsically permanent asset which should be utilized for the benefit of the people of the country, in whose interests it should be administered with careful regard for present and prospective conditions. The facts ascertained in certain specific cases furnish a basis for the claim that the value of the power would pay the cost of all engineering and other works required in such cases to control the streams for naviga-

tion and other uses. In the light of recent progress in electrical application, it is clear that over wide areas the appropriation of water power offers an unequaled opportunity for monopolistic control of industries. Wherever water is now or will hereafter become the chief source of power, the monopolization of electricity produced from running streams involves monopoly of power for the transportation of freight and passengers, for manufacturing, and for supplying light, heat, and other domestic, agricultural, and municipal necessities, to such an extent that unless regulated it will entail monopolistic control of the daily life of our people in an unprecedented degree. There is here presented an urgent need for prompt and vigorous action by State and Federal governments [pp. 21-22].

15. The control of waterways on which successful navigation depends is so intimately connected with the prevention of floods and low waters, and works designed for these purposes; with the protection and reclamation of overflow lands, and works designed therefor; with the safeguarding of banks and maintenance of channels, and works employed therein; with the purification and clarification of water supply, and works designed therefor in conjunction with interstate commerce; with control and utilization of power developed in connection with works for the improvement of navigation; with the standardizing of methods and facilities and the coordinating of waterway and railway instrumentalities; and throughout the larger area of the country with reclamation by irrigation and drainage, and works designed primarily for these purposes—that local and special questions concerning the control of waterways should be treated as a general question of national extent, while local or special projects should be considered as parts of a comprehensive policy of waterway control in the interests of all the people [pp. 22-23].

A. We recommend that hereafter plans for the improvement of navigation in inland waterways, or for any use of these waterways in connection with interstate commerce, shall take account of the purification of the waters, the development of power, the control of

floods, the reclamation of lands by irrigation and drainage, and all other uses of the waters or benefits to be derived from their control [p. 25].

1908, *Report of National Conservation Commission*, S.Doc. 676, 60th Cong., 2d sess.:

We also especially approve and indorse the proposition that all uses of the waters and all portions of each waterway should be treated as interrelated; and we emphatically urge prompt and effective legislation providing for the immediate and proper development of the waterways of the country for navigation, water supply, and other interstate uses, preferably by direct federal appropriations; otherwise by the issue of bonds [p. 27].

1910, *Report of National Waterways Commission*, S.Doc. 469, 62d Cong., 2d sess.:

In providing for the future development of the country, consideration must be given to the fact that water, as well as land, is an asset which makes up an integral part of our natural wealth. Waters must ultimately be utilized not merely for navigation, but also for irrigation and for power, when available for these purposes; also, all practicable means must be used for their clarification and for the prevention of floods and droughts.

It is desirable that whenever navigation is improved the most careful attention be given to these other associated objects, and while it is not the opinion of the commission that waterway improvements for the development of navigation should be deferred until a comprehensive and final plan for the utilization of waters can be devised, on the other hand subjects pertaining to the control and most beneficial utilization of water should at all times be considered, and improvements looking to the promotion of navigation should, as far as possible, harmonize with the general uses and beneficial control of waters [app. I, p. 82].

1912, Act of July 25 (37 Stat. 201):

In order to make possible the economical future development of water power, the Secretary of War, upon recommendation of the Chief of Engineers, is hereby authorized in his discretion to provide in the permanent parts of any dam authorized at any time by Congress for the improvement of navigation, such foundations, sluices and other works as may be considered desirable for the further development of its water power [p. 233].

1928, Boulder Canyon Project Act of December 21 (45 Stat. 1057):

. . . That for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River compact hereinafter mentioned, is hereby authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River . . . [p. 1057].

1930, Statement of Chairman Norris of the Senate Committee on Agriculture and Forestry in the debate on the Rivers and Harbors Bill of 1930 concerning the construction of the Cove Creek (now Norris) Dam for Mississippi flood control:

Mr. President, it is very appropriate . . . in considering a rivers and harbors bill to call attention of the Senate and the committee to the intimate way in which rivers and harbors, so far as the rivers and harbors bill is considered, are interlocked and connected with flood control. In fact, flood control as applied to our rivers, navigation as applied to our rivers, irrigation as applied to our rivers, and power as applied to our rivers, all dovetail and harmonize with each other and help each other.

Food control is recognized . . . as a national problem.

* * *

The control of flood waters by the building of dikes and levees, while very often to a great extent successful, I think everyone must concede has also been to a considerable degree disappointing . . .

* * *

It seems to me the proper way to control the flood waters of the Mississippi Valley and the Mississippi River is to build dams near the source of the rivers wherever nature has provided a proper site for a storage reservoir. The waters thus stored will be released when the river is low, thus increasing the flow when an increased flow is desired, and they will be held back when the river is in flood, thus decreasing the height of the stream when desired.

Moreover, Mr. President, that kind of a system would improve the navigation of the main stream and the tributary streams as well, because more water would be put into the stream than during low water, and we should keep out of the stream by that means a great part of the water which flows into it when the river is in flood.

Where, particularly on the west side of the Mississippi River, there is not sufficient rainfall for the growing of crops, such impounded waters could be used for irrigation . . .

Mr. President, the building of flood-control dams and paying for them simply on the theory of protecting the lower reaches of the Mississippi, and its tributaries, would cost an enormous amount of money, but if we can increase navigation by that means, if we can, as we could in many instances, double the navigability of the streams, it would be proper to charge a part of that expense to navigation, the improvement of which is another Governmental function.

If we can make it easier for agriculture to obtain water for irrigation we may properly charge a part of the expense to agriculture . . .

In addition to all this, Mr. President, if such dams were built there could be developed an immense amount of power by the installation of proper machinery, and that power could be distributed over a great portion of the great Mississippi Valley by means of the flood waters impounded and held back by such dams. *Thus another useful service could be rendered, and a part of the expense could then be properly charged up to power* . . .

. . . on the eastern side of the great Mississippi Valley we have Cove Creek, for the development of which we have provided in a bill which has passed both houses of Congress, but it is now held up in conference. The dam at Cove Creek should now be built. It would retain out of the Tennessee River 3,500,000 acre-feet of water—an enormous volume of water—which, if properly handled, would do more than any other one improvement to make the Tennessee River navigable from its mouth up to Cove Creek. Also it would prevent floods not only on the Tennessee River but to an appreciable extent on the Mississippi River . . . [72 Cong. Rec. 11295-11296; emphasis supplied].

1930, The Rivers and Harbors Act (46 Stat. 918):

The project for the permanent improvement of the main stream of the Tennessee River for a navigable depth of nine feet in accordance with the recommendations of the Chief of Engineers in House Document Numbered 328 of the Seventy-first Congress, second session, is hereby authorized: *Provided*, That an expenditure of \$5,000,000 shall be authorized to be appropriated for the prosecution of work under this project: *Provided further*, That the Chief of Engineers is hereby directed to ascertain and report to Congress on the first day of the first regular session of the Seventy-second Congress, advising the prospective cooperation offered by responsible interests, under the Federal Water Power Act, in the program of construction recommended by the Chief of Engineers, providing for the nine-foot project by means of high dams [pp. 927-928].

1934, *Report of the National Resources Board:*

Interrelations of physical factors, interests and responsibilities make the development of the use and control of water factors a problem of coordination from several points of view. It is this multiplicity of coordinations that makes the problem a real challenge to intelligence and to capacity to plan.

(a) *Multiple Uses:* It has been the custom generally to approach a water factor as presenting only one specific problem of control or use; for instance, elimination of a flood hazard, or navigation, or irrigation, or power. Study of many situations indicates, however, that frequently the combination of factors is such that achievement of some particular objective may be promoted by combining other objectives with it. Usually a project is conceived because of some one hazard or of some one desired use; but if a large view is taken it becomes apparent that other uses are potential and should be included in the project, in order, on the one hand, to secure the greatest total benefit from the natural resource, and, on the other hand, to make the cost of each component benefit less than it otherwise would be. Many projects have been reviewed by the committee which, although inspired by a single purpose, offer excellent opportunities for combinations which would multiply benefits and reduce the cost of any one benefit below what it would be if sought by itself. Thus a project may at first appear to involve only the element of levee or reservoir control of floods, but careful consideration may disclose that reservoir control may carry with it opportunities for power generation, water supply for adjacent communities, and recreational facilities. In exceptional instances the same dam and reservoir may be made to serve flood control, irrigation, power, and recreational purposes. A dam conceived at first solely for navigation control may offer also power generation. No matter what the originating purpose, every other reasonable purpose should be considered in defining and planning a water project [pp. 263-264].

1935, Statement by Gerard H. Matthes, Principal Engineer of the Mississippi River Commission, appearing in *Transactions American Society of Civil Engineers*, LXI (1935), 919-920:

Reservoirs possess important potentialities as flood-control structures . . . but the significant fact remains that surprisingly few have been built for that purpose despite the urgent need for flood control that exists on many streams. In 1920 there were in the United States a paltry dozen reservoirs and retarding basins devoted exclusively to the control of floods. This number includes such minor units as the retarding basin on Dry River, near Watervliet, N. Y., and another, even smaller, on Paxton Creek, for the protection of Harrisburg, Pa. From estimates compiled by the writer in 1920 there were then in the world at large fewer than 100 flood-control structures of these two types. More than one-half of these were in Europe, 21 being in one river basin in Germany. Until a few years ago this paucity of flood-control reservoirs had not changed materially. In the United States, during the past six years, many reservoir projects for flood control have been surveyed and reported on, but to date (1935) few of these projects have reached the construction stage. The chief obstacle appears to be their unwarranted cost.

In general, a storage basin for the handling of large volumes of water ranks among the most costly of hydraulic structures, whatever may be its purpose. In hydro-electric development it is common for the dam and reservoir to represent the largest single item of investment cost, and the one upon which most often hinges the economic feasibility of the entire development. Experience teaches that reservoirs designed exclusively for flood control have been found less likely to be warranted on strict economic considerations, than have reservoirs designed for any other single purpose. There is a steadily growing tendency to build multiple-use reservoirs such that the cost may be prorated among two or more uses, often wholly unrelated. Flood

control, which is often included in such combinations, is gaining steadily in importance and is emerging from the incidental by-product class in which it has largely figured in the past, into a well-defined reliable status. Boulder Dam, on the Colorado River, which is designed primarily for flood control and at which power will be generated, as well as water furnished for irrigation, domestic supply, and navigation purposes, is the outstanding example of the multiple-use type. Norris Dam, on the Clinch River, Tygart River Dam, on the headwaters of the Ohio River, and Fort Peck Dam on the Missouri River, are to serve not less than two purposes each. The flood-control reservoirs being built for the Los Angeles District will be operated so as to make available the impounded waters for irrigation and water supply. The reservoirs of the Muskingum Conservancy District will serve other purposes beside flood protection to the Muskingum Valley. Credit should be given the larger of the existing Western irrigation reservoirs which derive their water supply mainly from flood run-off, for having reduced flood flow more or less effectively although they have never been operated for that purpose.

The conclusion is inescapable that the multiple-use reservoir is destined to play an increasingly important role in the future. This is supported by the following considerations: (a) in the United States, to date, only densely populated, highly industrialized areas can afford the cost of reservoirs for the sole purpose of flood control; (b) costly impounding structures for the sole purpose of preventing flood damage to small towns and farm lands situated in natural flood-plains can rarely be justified on a strictly economic basis; (c) to waste flood waters immediately they have been impounded, as must be done at retarding basins or at reservoirs designed solely for flood control, is contrary to the modern concept of water resources utilization; and, (d) multiple use of reservoirs divides the burden of cost between two or more interests, and the increased benefits which result are more likely to place the undertaking on a sound economic basis.

2. *Preferences Given to Public Agencies*

1902, Reclamation Act of June 17 (32 Stat. 388), as amended by section 5 of act of April 16, 1906 (34 Stat. 116):

That whenever a development of power is necessary for the irrigation of lands under any project undertaken under the said reclamation Act, or an opportunity is afforded for the development of power under any such project, the Secretary of the Interior is authorized to lease for a period not exceeding ten years, giving preference to municipal purposes, any surplus power or power privilege, and the moneys derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived: *Provided*, That no lease shall be made of such surplus power or power privilege as will impair the efficiency of the irrigation project [p. 117].

1920, Federal Water Power Act of June 10 (16 U.S.C. 800):

Preferences in issuance of preliminary permits or licenses. In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 808 of this chapter the commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the commission equally well adapted, or shall within a reasonable time to be fixed by the commission be made equally well adapted, to conserve and utilize in the public interest *the navigation and water resources of the region* . . . [emphasis supplied].

1928, Boulder Canyon Project Act of December 21 (45 Stat. 1057):

Contracts for the use of water and necessary privileges for the generation and distribution of hydroelectric energy or for the sale and delivery of electrical energy shall be made with responsible applicants therefor who will pay the price fixed by the said Secretary with a

view to meeting the revenue requirements herein provided for. In case of conflicting applications, if any, such conflicts shall be resolved by the said Secretary, after hearing, with due regard to the public interest, and in conformity with the policy expressed in the Federal Water Power Act as to conflicting applications for permits and licenses, except that preference to applicants for the use of water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy, or for delivery at the switchboard of a hydroelectric plant, shall be given, first, to a State for the generation or purchase of electric energy for use in the State, and the States of Arizona, California, and Nevada shall be given equal opportunity as such applicants [pp. 1060-1061].

3. Tabular Summaries of Surplus Power Disposition by Bureau of Reclamation.

1932, REPORT OF THE COMMISSIONER OF RECLAMATION
RECLAMATION TABLE 19.—Power plants operated on Bureau of Reclamation projects during fiscal year 1931-32

Project	Name of plant	Out- going line voltage	Plant capacity (kilo- watts)	Num- ber of units	Head in feet	First cost of plant	Cost of opera- tion and main- tenance	Esti- mated depreci- ation	Cost per kilo- watt- hour exclu- sive of depreci- ation	Distribution of kilowatt-hours generated				Total output, kilo- watt- hours	Gross power sales
										Sold to consumers	Irrigation and drainage require- ments	Used for other pur- poses	Losses		
Boise...	Black Can- yon.	66,000	10,000	2	74-86	\$414,317.21	\$10,150.01	\$15,291.07	\$0.000029	12,388,000	23,247,000	661,000	.....	36,296,500	\$83,138.51
Minidoka.	Boise River..	22,000	1,875	3	20.4-25.7	167,905.37	3,372.65	\$876.69	.00307	.....	1,097,701	.....	.....	1,097,701	8,533.94
	Minidoka...	33,000	10,000	6	46.77	784,778.13	24,764.74	24,396.00	.00043	19,857,077	26,053,710	8,910,874	4,065,366	58,245,000	164,871.51
	American Falls (2 plants).	33,000	540	1	44	76,975.00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Idaho lands.	Lahontan?	33,000	1,875	3	105-110	141,886.01	6,230.50	4,260.00	.00290	1,428,900	98,703	621,637	.....	2,149,240	7,412.14
	Guernsey....	31,000	6,000	2	70-90	454,244.27	13,844.20	8,035.00	.00102	19,934,138	12,920	305,373	2,128,839	13,550,000	244,050.22
	Lingle....	33,000	1,750	4	106	184,791.74	12,508.75	5,200.00	.00142	None	None	90,800	Unknown	8,825,250	None
Montana	Elphinstone	2,300	150	1	18-180	8,440.50	1,970.04	None	.022	1,005,730	None	267,595	189,615	90,800	22,623.77
	Pilot Butte..	31,000	2,000	2	103	218,262.14	25,406.11	7,800.00	.01737	.....	.....	.....	.....	1,462,940	.....
	Horse Mesa..	110,000	33,300	3	265	754,885.13	37,744.25	37,744.25	.00035	.....	.....	.....	.....	91,229,000	.....
Utah	Roosevelt....	110,000	19,250	7	70-240	1,235,894.58	60,091.92	61,794.73	.00261	.....	.....	.....	.....	23,059,000	.....
	Stewart	45,000	13,000	1	35-114	320,371.98	12,486.24	16,018.60	.00056	.....	.....	.....	.....	22,200,000	.....
	Mountain..	110,000	8,750	1	40-150	482,767.80	12,539.54	24,138.39	.00044	185,484,347	22,372,620	167,437	33,200,790	31,103,000	2,094,616.40
Arizona	Mormon Flat.	11,000	5,250	6	111	755,147.29	20,075.70	37,757.36	.00171	.....	.....	.....	.....	11,755,600	.....
	Croscut....	40,000	2,000	2	34	163,139.60	10,822.63	8,556.98	.00144	.....	.....	.....	.....	7,497,400	.....
	South Con- solidated.	11,000	1,060	2	19	109,500.73	8,075.24	14,475.04	.00325	.....	.....	.....	.....	2,487,925	.....
California	Arizona Falls.	11,000	600	1	40	91,990.84	8,690.00	14,599.54	.00294	.....	.....	.....	.....	2,953,410	.....
	Chandler....	33,000	7,000	3	220	746,505.72	13,168.38	26,085.42	.00245	4,529,170	None	87,889	761,651	5,378,710	69,962.83
	Shoshone....	11,000	1,000	2	123.5	60,904.80	20,634.70	16,627.48	.00660	2,833,479	None	11,334	283,348	3,128,161	38,824.24
Nevada	Spanish Fork.	6,600	187	1	73	23,000.00	2,478.24	1,056.40	.00497	None	499,000	None	None	499,000	None
	Rocky Ford..	33,000	2,000	2	9.88	317,936.09	12,212.35	13,248.00	.00139	7,275,404	1,023,076	88,763	379,586	8,766,849	68,426.52
	Siphon Drop.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

NOTE.—For footnotes, see bottom of page 112.

RECLAMATION TABLE 20.—Principal contracts for sale of power in force June 30, 1932

Project	Contractor	Date of contract	Date of expiration	Reserved power (kilowatts)	Gross rate per kilowatt-hour (cents)	Minimum monthly payment	Gross income fiscal year 1931-32	Remarks
Boise.....	Gem Irrigation District..... Idaho Power Co.....	Oct. 18, 1924 Apr. 10, 1930	Oct. 18, 1934 Apr. 15, 1936	1,000	{ Rental basis leased for standby service.			{ Served through Idaho Power Co. from Black Canyon power plant, covers Boise River power plant.
Minidoka.....	Ontario-Nyssa Irrigation District. City of Burley, Idaho..... City of Rupert, Idaho..... Paul Electric Co..... Village of Albion, Idaho..... Unity Light & Power Co..... Village of Declo..... Rural Electric Co..... East End Mutual Electric Co.	Apr. 11, 1931 Jan. 1, 1930 do Feb. 4, 1924 Jan. 1, 1931 Mar. 1, 1932 Oct. 1, 1930 Apr. 1, 1932 Feb. 1, 1928	Apr. 11, 1936 Jan. 1, 1940 do do Mar. 31, 1934 Jan. 1, 1936 Mar. 1, 1935 Oct. 1, 1933 Apr. 1, 1937 Feb. 1, 1933	1,000 2,100 1,300 150 280 67 41 79 20	4-5 4-5 4-5 4-5 4-5 4-5 4-5 4-5 4-5	\$2,100.00 900.00 416.67 103.68 89.24 2,980.13 59.04 2,126.23 31.68	\$54,772.45 30,019.01 6,531.67 4,021.18 2,980.13 2,126.23 1,710.34	
Newlands.....	Village of Heyburn, Idaho..... Village of Minidoka, Idaho..... Declo Light & Power Co..... Ferry Light & Power Co..... Amalgamated Sugar Co..... Acequia Mutual Electric Co..... West End Power Co..... Riverside Electric Co..... 40 small contracts..... Sierra Pacific Power Co.....	Jan. 1, 1930 Jan. 1, 1924 May 1, 1928 Mar. 1, 1929 May 1, 1932 Dec. 1, 1930 Jan. 1, 1931 Feb. 1, 1928 Various Jan. 29, 1923	Jan. 1, 1933 Apr. 1, 1934 May 1, 1933 Mar. 1, 1934 May 1, 1933 May 1, 1935 Dec. 1, 1936 Feb. 1, 1933 Various Nov. 30, 1934	80 150 20 15 39 19 15 15 1,500	4-5 4-5 4-5 4-5 4-5 4-5 4-5 4-5 4-5 3-4	60.00 150.00 31.68 24.30 39.70 30.10 24.30 24.30 11,200.00	1,752.51 1,848.93 1,578.66 1,450.74 1,485.06 1,134.37 984.05 1,029.79 11,337.80 7,412.14	{ Contract assigned by Canyon Power Co. to Sierra Pacific Power Co.
North Platte.....	Western Public Service Co., Mountain States Power Co., Casper, Wyo., Town of Wheatland, Wyo., Colorado Fuel & Iron Co., Town of Torrington, Wyo., City of Gering, Nebr.	Oct. 29, 1927 Nov. 13, 1931 May 3, 1928 May 18, 1925 Apr. 3, 1928 Apr. 17, 1928	Oct. 29, 1937 Dec. 31, 1941 June 30, 1938 Jan. 1, 1941 June 30, 1938 do	400 1,200 500 1,200 250	8-1 8-1 8-1 8-1 8-1	2,400.00 4,200.00 800.00 800.00 800.00	43,109.11 57,516.48 24,421.28 16,227.77 23,425.78 19,199.20	

RECLAMATION TABLE 20—Continued

Project	Contractor	Date of contract	Date of expiration	Reserved power (kilowatts)	Gross rate per kilowatt-hour (cents)	Minimum monthly payment	Gross income fiscal year 1931-32	Remarks
North Platte . . .	City of Mitchell, Nebr.	Apr. 30, 1928	June 30, 1938	250	8-1	\$800.00	\$15,575.08	
	Village of Morrill, Nebr.	May 1, 1928	do	150	8-1	300.00	11,262.71	
	Village of Lyman, Nebr.	Apr. 16, 1928	do	250	8-1	250.00	8,751.80	
	Town of Guernsey, Wyo.	May 17, 1928	do	150	8-1	450.00	6,685.55	
	Town of Lingie, Wyo.	Apr. 30, 1928	do	75	8-1	175.00	4,974.62	
	Mountain States Power Co., Yoder, Wyo.	July 15, 1928	Dec. 31, 1934	25	8-1	75.00	3,027.28	
	Town of Fort Laramie, Wyo.	May 7, 1928	June 30, 1938	25	8-1	50.00	1,559.31	
	Holly Sugar Corporation, Torrington, Wyo.	Apr. 7, 1932	May 1, 1937	75	2.5-1.5	None	1,388.50	
	Western Public Service Co., Huntley, Wyo.	Dec. 1, 1930	Dec. 31, 1935	75	8-1	187.50	3,646.44	Each contract less than \$1,000.
	2 small contracts.	Various	Various	3	8-5	Various	87.72	
Riverton.	Mountain States Power Co.	Mar. 5, 1929	Dec. 31, 1943	300	6-1	1,500.00	20,166.79	
Shoshone.	do	July 1, 1930	July 1, 1940	1,000	2.5-5	3,350.00	25,125.40	
	Farm Light & Power Co.	Aug. 15, 1928	Aug. 15, 1933	3	5-1	14.25	1,001.40	
	C. B. & O. R. Co.	June 1, 1923	Jan. 11, 1934	20	6-1	30.00	1,801.14	
	2 small contracts.	Various	Various	145	6-5	Various	873.93	
Strawberry Valley	Town of Spanish Fork, Utah.	May 1, 1928	May 1, 1931	185	6-7.5	740.00	13,415.79	Do. contract is being made.
	Town of Payson, Utah.	Feb. 5, 1932	Feb. 4, 1935	125	6-7.5	500.00	12,438.14	
	Utah Packing Corporation.	Jan. 1, 1926	Jan. 1, 1933	385 and 20	6-7.5	577.50-30.00	4,883.26	
	Town of Springville, Utah.	June 18, 1931	June 17, 1932	15	2.2-1	None	4,004.61	Do.
	Town of Salem, Utah.	Feb. 5, 1932	Feb. 4, 1935	15	6-7.5	60.00	1,747.47	Do.
	Several small contracts.	Various	Various . . . . .	.....	Various	Various	2,335.97	Each contract less than \$1,000.
Yuma.	Southern Sierras Power Co.	July 14, 1926	July 14, 1936	{ To production limit	1-7.5	.....	54,503.47	
	2 small contracts.	Various	Various . . . . .	.....	4-1	.....	1,284.10	Do.

1 April to September, inclusive.

2 Minimum payment guaranteed on annual basis.

Footnotes to Reclamation Table, on page 110.

1 6,600-volt generators; all others 2,300 volts except as noted.

2 Entire output delivered to Idaho Power Co.

3 West Side plant operated only in case of emergency; not operated since 1927. Island plant dismantled, first cost included.

4 Estimated.

5 Includes purchased power.

6 Operated by irrigation district or water users' association.

7 Operated by Sierra Pacific Co. under lease assigned by Canyon Power Co.

8 11,000-volt generators.

9 All 8 power plants feed into the same distribution system.

SECTION E**PERTINENT STATE LEGISLATION**

Appellants, in their Appendix E, have reprinted statutes of the State of Tennessee authorizing municipalities and cooperative associations to contract with the Tennessee Valley Authority, but have omitted chapter 32 of the Public Acts of Tennessee of 1935. For purposes of completeness, that statute is reprinted here:

**THE MUNICIPAL ELECTRIC PLANT ACT OF 1935,
CHAPTER 32, PUBLIC ACTS OF TENNESSEE, 1935*****SENATE BILL No. 113**

An act to authorize counties, incorporated cities and towns in the State of Tennessee to construct, purchase or otherwise acquire, and to operate and maintain electric generating or distribution systems, within or without the county or corporate limits, to construct, purchase or otherwise acquire, to operate maintain or use, individually or jointly, a transmission line or lines, within or without the corporate or county limits, to make improvements, extensions, betterments or additions to such electric systems, and such transmission line or lines to furnish electric power and energy to any consumer or consumers, to finance such acquisition, improvement, extension, betterment, or addition by the issuance of bonds and the acceptance of federal grants, to provide for the supervision, management and control of such electric systems and such lines, to prescribe rules and policies to govern resale rates, disposition of revenue, and other operating and management practices of such systems, in order to promote the increased domestic use of electricity in rural and urban areas by enabling such counties, incorporated cities and towns to utilize the surplus power generated by the Tennessee Valley Authority or the power generated at any other works or dams.

* This statute was upheld by the Tennessee Supreme Court in the case of *Tennessee Elec. Power Co. v. Fayetteville*, 114 S.W. (2d) 811 (1938); and in the case of *Kentucky-Tennessee L. & P.Co. v. Clarksville*, December term, 1937, reprinted in Appendix F.

SECTION 1. SHORT TITLE.—*Be it enacted by the General Assembly of the State of Tennessee, That this Act may be cited as "The Municipal Electric Plant Act of 1935."*

SEC. 2. DEFINITIONS.—*Be it further enacted, That the following terms when used in this Act shall have the following meaning:*

(a) The term "municipality" shall mean any county, incorporated city or town in the State of Tennessee.

(b) The term "electric plant" shall mean generating and/or transmission and/or distribution systems, together with all other facilities, equipment and appurtenances necessary or appropriate to any such system, for the furnishing of electric power and energy for lighting, heating, power or any other purpose for which electric power and energy can be used.

(c) The term "improvement" shall mean any improvement, extension, betterment or addition to any electric plant.

(d) The term "electric service" shall mean the furnishing of electric power and energy for lighting, heating, power or any other purpose for which electric power and energy can be used.

(e) The term "acquire" shall mean to purchase, to lease, to construct, to reconstruct, to replace, or to acquire by gift.

(f) The term "dispose" shall mean to sell, to lease, or otherwise transfer any interest in property.

(g) The term "improve" shall mean to acquire any improvement.

(h) The term "Federal Agency" shall include the United States of America, the President of the United States of America, or the Federal Emergency Administrator of Public Works, Reconstruction Finance Corporation, Tennessee Valley Authority, or any other similar agency, instrumentality or corporation of the

United States of America, which has heretofore been or may hereafter be created by or pursuant to any Act or Acts of the Congress of the United States of America.

(i) The term "law" shall mean any Act or Statute, general, special or local, of the State of Tennessee, including, but without limitation, the charter of any municipality.

(j) The term "governing body" shall mean the County Court, board, body or commission having general charge of the municipality.

SEC. 3. POWERS OF MUNICIPALITIES.—*Be it further enacted*, That every municipality shall have power and is hereby authorized:

(a) To acquire, improve, operate and maintain within and/or without the corporate or county limits of such municipality, and (with the consent of such other municipality) within the corporate or county limits of any other municipality, an electric plant and to provide electric service to any person, firm, public or private corporation, or to any other user or consumer of electric power and energy, and to charge therefor.

(b) To acquire, improve or use jointly with any other municipality a transmission line or lines together with all necessary and appropriate facilities, equipment and appurtenances, for the purpose of transmitting power and energy and/or connecting their respective electric plants with a wholesale source of supply, and to this end such municipalities may provide by contract for the method of holding title, for the allocation of responsibility for operation and maintenance and for the allocation of expenses and revenues.

(c) To accept grants, loans or other financial assistance from any Federal Agency, for or in aid of the acquisition or improvement of any electric plant.

(d) To contract debts for the acquisition or improvement of any electric plant, to borrow money, to issue its bonds to finance such acquisition or improvement

and to provide for the rights of the holders of the bonds and to secure the bonds as hereinafter provided, and to pledge all or any part of the revenues derived from electric service to the payment of such debts or repayment of money borrowed.

(e) To assess, levy and collect unlimited ad valorem taxes on all property subject to taxation to pay such bonds, and the interest thereon.

(f) To acquire, hold and, subject to the applicable provisions of any bonds or contracts, to dispose of any property, real or personal, tangible or intangible, or any right or interest in any such property in connection with any electric plant, and whether or not subject to mortgages, liens, charges, or other encumbrances, but no municipality shall dispose of all or substantially all of its electric plant except as provided in section 22 hereof.

(g) To make contracts and execute instruments containing such covenants, terms, and conditions as in the discretion of the municipality may be necessary, proper or advisable for the purpose of obtaining loans from any source, or grants, loans or other financial assistance from any Federal Agency; to make all other contracts and execute all other instruments as in the discretion of the municipality may be necessary, proper or advisable in or for the furtherance of the acquisition, improvement, operation and maintenance of any electric plant and the furnishing of electric service; and to carry out and perform the covenants terms and conditions of all such contracts or instruments.

(h) To enter on any lands, waters and premises for the purpose of making surveys, soundings and examinations in connection with the acquisition, improvement, operation or maintenance of any electric plant and the furnishing of electric service.

(i) To do all Acts and things necessary or convenient to carry out the powers expressly given in this Act.

SEC. 4. ELECTION TO AUTHORIZE BONDS—ELECTION, RESOLUTION AND PROCEDURE.—*Be it further enacted, That*

before any bonds are issued under this Act an election shall be held as follows: The governing body of the municipality shall adopt a resolution (herein called the "Election Resolution") which shall state in substance (a) the amount or maximum amount of bonds to be issued; (b) the purpose or purposes for which such bonds are to be issued; (c) the rate or maximum rate of interest which such bonds are to bear; (d) a brief concise statement (which need not go into any detail other than the mere statement of the fact) showing whether such bonds will be payable (1) exclusively from revenues, or (2) exclusively from taxes, or (3) from taxes only in the event of a deficiency in revenues, or (4) from taxes and additionally secured by a pledge of revenues; (e) the date on which such election will be held; (f) the place or places where votes may be cast; and (g) the hours between which such voting places will be open. Such Election Resolution shall be published in full at least once, not less than fifteen days prior to the date fixed for such election, in a newspaper published and circulating in the municipality, or, if there be no such newspaper, then such Election Resolution shall be so published in a newspaper circulating in the municipality and shall also be posted not less than fifteen days prior to the date fixed for such election, in five conspicuous places in the municipality. At such election the ballot shall contain the words "For the Issuance of Electric Plant Bonds" and "Against the Issuance of Electric Plant Bonds." Opposite each of said phrases shall be a hollow square, each side of which shall be not less than one-quarter inch nor more than one inch. Any qualified voter of such municipality shall be entitled to vote at the election. The voter shall indicate his vote "For the Issuance of Electric Plant Bonds" or "Against the Issuance of Electric Plant Bonds" by inserting a mark in the square opposite such phrase. It shall not be necessary to print any question or any other words or figures on any ballot, nor need the ballot be of any particular size, color or quality, nor need sample ballots be printed, posted, or distributed. At or before the regular meeting of the governing body of the municipality next succeeding the date of such election, such governing body shall canvass the returns and determine and declare the results of the election, and it shall be the duty of the governing body of such municipality to enter upon its

minutes the results and the returns in such election, which entry shall, after the delivery of, and payment for, any bonds voted upon at the election, be conclusive evidence of the result of such election. Except as otherwise provided in this Act, such election shall be conducted by the election authorities prescribed by the general law of the State of Tennessee and according to the provisions of the general election laws of the State of Tennessee.

SEC. 5. EFFECT OF ELECTION RESOLUTION AND ELECTION.—*Be it further enacted*, That if a majority of the qualified voters who vote in such election vote "For the Issuance of Electric Plant Bonds", the governing body of the municipality shall proceed to issue the bonds described in the Election Resolution, and if no such majority so assents, the proposition thus defeated shall not again be the subject of an Election Resolution until three months shall have expired from the time the Election Resolution relative to such bonds was published, or published and posted, as the case may be.

SEC. 6. PUBLICATION OF STATEMENT AFTER ELECTION; INOONTESTABILITY.—*Be it further enacted*, That if an election on the proposition is had and such election results in favor of the proposition, the Election Resolution shall again be published in a newspaper published and circulated in the municipality or, if there be no such newspaper, then such Election Resolution shall be so published in a newspaper circulating in the municipality and shall also, on the same day of such publication, be posted in five conspicuous places in such municipality. With such Election Resolution there shall be published, or published and posted, as the case may be, a statement substantially in the following form:

STATEMENT

The election referred to in the resolution published (or posted) herewith was held on the (here insert date of election). After such election (here insert designation of governing body and name of municipality) has found, determined and declared that the proposition was carried by a vote of _____ to _____. No suit, action or proceeding questioning the validity of the bonds described in

such resolution or proceeding for the issuance of such bonds can be commenced after the expiration of twenty days from the date of this publication (or posting). By order of the (here insert designation of governing body).

Clerk
(or other recording officer)

No suit, action or proceeding questioning the validity of bonds issued under this Act or proceedings for the issuance of such bonds shall be commenced after the expiration of twenty days from the date of publication, or publication and posting, as the case may be, of such an Election Resolution and such a Statement, substantially in the form above set forth.

SEC. 7. BOND PROVISIONS.—*Be it further enacted,* That the bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times, not exceeding thirty years from their respective dates, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be sold or hypothecated in such blocks, may be subject to such terms of redemption, with or without premium, and may be declared or become due after the maturity date thereof, as may be provided by resolution or resolutions of the governing body of the municipality. Such bonds may be issued for money or property at public or private sale, for such price or prices, at such rate or rates of interest, and may be hypothecated in such manner as the governing body may determine, but the interest cost to maturity of the property (at the value determined by the governing body, which determination shall be conclusive) or the money received for any issue of said bonds, shall not exceed six per cent (6%) per annum, payable semi-annually. Such bonds shall have all the qualities and incidents of negotiability. Such bonds shall not be subject to taxation.

In case any of the officers whose signature or counter-signatures appear on such bonds shall cease to be such officers before the delivery of the bonds, such signatures and

counter-signatures shall nevertheless be valid and sufficient for all purposes, the same as though such officers had remained in office until the bonds had been delivered. Such bonds, when issued, shall be known as "Electric Plant Bonds".

SEC. 8. ADDITIONAL POWERS TO SECURE BONDS AND TO MAKE AGREEMENTS.—*Be it further enacted,* That in order to secure the payment of any of the bonds issued pursuant to this Act, the interest thereon, or in connection with such bonds, the governing body of any municipality shall have power as to such bonds, to the extent not inconsistent with the mandatory provisions of this Act:

(a) To pledge the full faith and credit and unlimited taxing power of the municipality to the punctual payment of the principal of and interest on such bonds.

(b) To pledge all or any part of the revenues derived from electric service.

(c) To provide for the terms, form, registration, exchange, execution and authentication of such bonds.

(d) To provide for the replacement of lost, destroyed or mutilated bonds.

(e) To covenant as to the use and disposition of the proceeds from the sale of such bonds.

(f) To covenant as to the rates and charges of the electric plant.

(g) To redeem such bonds, and to covenant for their redemption, and to provide the terms and conditions thereof.

(h) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(i) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

(j) To vest in a trustee or trustees the right to receive all or any part of the income and revenue pledged and assigned to, or for the benefit of, the holder or holders of bonds issued hereunder, and to hold, apply and dispose of the same and the right to enforce any covenant made to secure or pay or in relation to the bonds; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute "events of default" and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of bonds of any specified amount or percentage of such bonds may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate.

(k) To make covenants other than, and in addition to, the covenants herein authorized, of like or different character, necessary or advisable to effectuate the purpose of this Act.

(l) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties.

SEC. 9. REMEDIES OF ANY HOLDER OR HOLDERS OF BONDS.—*Be it further enacted*, That any holder or holders of bonds, including a trustee or trustees for holders of such bonds, shall have the right, in addition to all other rights:

(a) By mandamus or other suit, action or proceedings in any court of competent jurisdiction to enforce his or their rights against the municipality, the governing body thereof, the board of public utilities hereinafter provided for, any and other proper officer, agent or employee of any of them, including, but without limitation, the right to require the municipality, the governing body, the said board, and any proper officer, agent or employee of any of them, to assess, levy and collect taxes, and to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of taxes or electric plant revenues, and to require the

municipality, the governing body thereof, the said board and any officer, agent or employee of any of them to carry out any other covenants and agreements and to perform its and their duties under this Act;

(b) By action or suit in equity to enjoin any acts or things which may be unlawful or a violation of the rights of such holder of bonds.

SEC. 10. ADDITIONAL REMEDIES CONFERRED BY RESOLUTION.—*Be it further enacted*, That any municipality shall have power by resolution of its governing body to confer upon any holder or holders of a specified amount or percentage of bonds, including a trustee or trustees for such holders, the right in the event of an "event of default" as defined in such resolution or as may be defined in any agreement with the holder or holders of such bonds or the trustee or trustees therefor:

(a) By suit, action or proceedings in any court of competent jurisdiction to obtain the appointment of a receiver of the electric plant or any part or parts thereof. If such receiver be appointed he may enter and take possession of such electric plant or any part or parts thereof and operate and maintain the same, and collect and receive all revenues thereafter arising therefrom in the same manner as the municipality itself might do and shall deposit such moneys in a separate account or accounts and apply the same in accordance with the obligations of the municipality as the court shall direct.

(b) By suit, action or proceeding in any court of competent jurisdiction to require the governing body of the municipality and/or the board to account as if it were the trustee of an express trust.

Any such resolution shall constitute a contract between the municipality and the holders of bonds of such issue.

SEC. 11. DEBT LIMITS.—*Be it further enacted*, That bonds may be issued under this Act notwithstanding and without regard to any limits or restriction on the amount or percentage of indebtedness or of outstanding obligations of any municipality contained in any law.

SEC. 12. EXPENSES OF SURVEYS, COST ESTIMATES, EMPLOYMENT OF ENGINEERS, ETC.—*Be it further enacted*, That all expenses actually incurred by the governing body of any municipality in the making of surveys, estimates of cost and of revenues, employment of engineers, attorneys or other employees, the giving of notices, taking of options, selling of bonds, and all other preliminary expenses of whatever nature, which such governing body deems necessary in connection with or precedent to the acquisition or improvement of any electric plant and which it deems necessary to be paid prior to the issuance and delivery of the bonds issued pursuant to the provisions of this Act, may be met and paid out of the general fund of said municipality not otherwise appropriated, or from any other available fund.

All such payments from the general or other funds shall be considered as temporary loans and shall be repaid immediately upon sale and delivery of the bonds, and claim for such repayment shall have priority over all other claims against the proceeds derived from the sale of such bonds.

SEC. 13. APPOINTMENT OF BOARD OF PUBLIC UTILITIES.—*Be it further enacted*, That any municipality, excepting those which employ a City-Manager or which have a population of less than two thousand (2,000), issuing bonds under the provisions of this Act for the acquisition of an electric plant shall, and any municipality now or hereafter owning or operating an electric plant under this Act or any other law may, appoint a board of public utilities (hereinafter called the "board").

The board shall be created in the following manner: At the time the governing body of a municipality issuing bonds hereunder determines that a majority of the qualified voters voting on the Election Resolution have assented to the bond issue for the acquisition of an electric plant, the chief executive officer of the municipality shall, or if no such bonds are issued, or if the municipality employs a City-Manager or has a population of less than two thousand (2,000), then at any time he may, with the consent of the governing body of the municipality, appoint two (2) or four (4) men from among the property holders of such municipality who are residents of the municipality and

have resided therein for not less than one year next preceding the date of appointment to such board. No regular compensated officer or employee of a municipality shall be eligible for such appointment until at least one year after the expiration of the term of his public office.

The original appointees, if two be appointed, shall serve for two and four years respectively, or if four be appointed, shall serve for one, two, three and four years respectively, from the first day of July next succeeding the date of appointment, as the said chief executive officer shall designate. Successors to retiring members so appointed shall be appointed for a term of four years in the same manner, prior to the expiration of the term of office of the retiring members. In addition to the members so appointed, such chief executive officer shall also, with the consent of the governing body of the municipality, designate a member of such governing body, or in his discretion the City Manager, to serve as a third or fifth member of the board, as the case may be. The term of such member shall be for such time as the appointing officer may fix, but in no event to extend beyond his term of office in such governing body or his employment as City-Manager, as the case may be. Appointments to complete unexpired terms of office shall be made in the same manner as original appointments. Each member shall give such bond, if any, as may be required by resolution of the governing body and shall qualify by taking the same oath of office as required for members of such governing body.

A majority of the board shall constitute a quorum and the board shall act by vote of a majority present at any meeting attended by a quorum and vacancies in the board shall not affect its power and authority so long as a quorum remains. Within ten days after appointment and qualification of members, the board shall hold a meeting to elect a chairman. The board shall at the same time designate a secretary and treasurer, or secretary-treasurer, who need not be members of the board and fix the amount of the surety bond which shall be required of such secretary and treasurer, or secretary-treasurer, and shall fix his or their compensation. The board shall hold public meetings at least once per month, at such regular time and place as the board may determine. Changes in such time and place of meeting shall be made known to the public

as far in advance as practicable. Save as otherwise expressly provided, the board shall establish its own rules of procedure. All members of the board shall serve as such without compensation, but they shall be allowed necessary traveling and other expenses while engaged in the business of the board, including an allowance of not to exceed Five (\$5.00) Dollars per month for attendance at meetings. Such expenses, as well as the salaries of the secretary and treasurer, or secretary-treasurer, shall constitute a cost of operation and maintenance of the electric plant.

Any member of the board may be removed from office for cause upon a vote of three-fourths of the members of the governing body of the municipality, but only after preferment of formal charges by resolution of a majority of the members of such governing body at a public hearing before such governing body.

Municipalities now or hereafter owning or operating a water works and/or sewerage works may confer upon the board the jurisdiction over such water works and/or sewerage works now or hereafter vested in any other board, commission or other body. If the board is given jurisdiction over such works it shall keep separate accounts for the electric plant and each works, making due and proper allocation of all joint expenses, revenues and property valuations.

SEC. 14. SUPERVISION AND CONTROL OF THE ELECTRIC PLANT.—*Be it further enacted*, That the general supervision and control of the acquisition, improvement operation and maintenance of the electric plant shall be in charge of the following agency (hereinafter referred to as the "supervisory body"): The board, or if there be no board, then the governing body of the municipality. If the latter, such governing body may by resolution delegate all or any of its powers or duties as supervisory body to the City-Manager, if any. The supervisory body shall appoint an electric plant superintendent (hereinafter called "superintendent"), who shall be qualified by training and experience for the general superintendence of the acquisition, improvement and operation of the electric plant. The superintendent need not be a resident of the state at the time of his appointment. His salary shall be fixed by the person or agency appointing such superintendent. The

superintendent shall serve at the pleasure of the supervisory body and may be removed by said body at any time.

Within the limits of the funds available therefor, all powers to acquire, improve, operate and maintain, and to furnish electric service, and all powers necessary or convenient thereto, conferred by this Act shall be exercised on behalf of the municipality by the supervisory body and the superintendent respectively. Subject to the provisions of applicable bonds or contracts, the supervisory body shall determine programs and make all plans for the acquisition of the electric plant, shall make all determinations as to improvements, rates and financial practices, may establish such rules and regulations as it may deem necessary or appropriate to govern the furnishing of electric service, and may disburse all moneys available in the electric plant fund hereinafter established for the acquisition, improvement, operation and maintenance of the electric plant and the furnishing of electric service. A copy of the schedule of the current rates and charges in effect from time to time and a copy of all rules and regulations of the supervisory body relating to electric service shall be kept on public file at the main and all branch offices of the electric plant and also in the office of the municipal clerk or recorder. The superintendent shall have charge of all actual construction, the immediate management and operation of the electric plant and the enforcement and execution of all rules, regulations, programs, plans and decisions made or adopted by the supervisory body. The superintendent shall appoint all employees and fix their duties and compensation, excepting that the appointment of all technical consultants and advisers and legal assistants shall be subject to the approval of the supervisory body. Subject to the provisions of Section 3 (f), the superintendent, with the approval of the supervisory body, may acquire and dispose of all property, real and personal, necessary to effectuate the purposes of this Act. The title of such property shall be taken in the name of the municipality. The superintendent shall let all contracts, subject to the approval of the supervisory body, but may, without such approval, obligate the electric plant on purchase orders up to an amount to be fixed by the supervisory body, but not to exceed Two Thousand (\$2,000) Dollars. Any work or construction exceeding in cost Two Thousand Dollars shall, before any contract is let or

work done, be advertised by the superintendent for bids, but the supervisory body shall have power to reject any and all bids. The superintendent shall make and keep full and proper books and records, subject to the supervision and direction of the supervisory body.

SEC. 15. ELECTRIC PLANT FUND.—*Be it further enacted*, That all moneys derived from the issuance of bonds hereunder, together with any Federal grant made in connection therewith, shall be paid to the proper fiscal agent of the supervisory body. Such agent shall deposit such moneys, together with all receipts from electric service or any other operation of the supervisory body as such, in a separate bank account or accounts (hereinafter called "electric plant fund"), separate from all other municipal funds, and shall keep adequate records of all such receipts and their sources. The fiscal agent shall pay out such moneys only on voucher signed by the superintendent. No such voucher for the payment of any such moneys shall be issued except upon the resolution or order of the supervisory body, a certified copy whereof shall be filed in the office of the fiscal agent.

SEC. 16. DISPOSITION OF MONEYS RECEIVED FROM THE ISSUANCE OF BONDS.—*Be it further enacted*, That all moneys received from the issuance of bonds shall be used solely to defray the cost of acquiring or improving an electric plant, except that such proceeds may in the discretion of the supervisory body also be used for the payment of the interest on the bonds during the first two years following the date of such bonds. The cost of the electric plant shall include all costs of acquisition, or improvement, including all preliminary expenses described in Section 12 hereof, the cost of acquiring all property, franchises, easements, and rights in the judgment of the supervisory body necessary or convenient therefor; engineering and legal expenses, expenses for estimates of cost and revenues, expenses for plans, specifications and surveys, other expenses incident or necessary to determining the feasibility or practicability of the enterprise, administrative expense, and such other expense as may be incurred in the financing herein authorized, the acquisition or improvement of the electric plant, the placing of such plant in operation, including the creation of a cash working fund, and the performance of

the things herein required or permitted in connection therewith.

SEC. 17. DISPOSITION OF REVENUES.—*Be it further enacted,* That the supervisory body shall devote all moneys in the Electric Plant Fund derived from any source other than the issuance of bonds to or for the payment of all operating expense; bond interest and retirement and/or sinking fund payments; the acquisition and improvement of the electric plant; contingencies; the payment of other obligations incurred in the operation and maintenance of the electric plant and the furnishing of electric service; the redemption and purchase of electric plant bonds in which case such bonds shall be cancelled; the creation and maintenance of a cash working fund; the payment of an amount to the general funds of the municipality not to exceed a cumulative return of 6% per annum of the equity or investment, if any, of the municipality; and, if the governing body of the municipality shall by resolution so request, payments to the municipality in lieu of ad valorem taxes on the property of the electric plant within the corporate or county limits of the municipality not to exceed the amount of taxes payable on privately owned property of similar nature. Any surplus thereafter remaining, after establishment of proper reserves, if any, shall be devoted solely to the reduction of rates. In computing the equity or investment of the municipality, the value of the electric plant shall be taken as its historical cost. The payment of bonds or the acquisition or improvement of property from the receipts derived from electric service or any other operation of the supervisory body as such shall not be considered to increase the equity or investment of the municipality.

SEC. 18. SERVICES RENDERED TO MUNICIPALITIES AND DEPARTMENTS AND WORKS THEREOF.—*Be it further enacted,* That the supervisory body shall charge the municipality and all departments and works thereof for any electric service furnished to them, at the rates applicable to other customers taking service under similar conditions. Revenues derived from such service shall be treated as all other revenues.

SEC. 19. RECORDS AND REPORTS OF THE BOARD.—*Be it further enacted*, That the board shall keep a complete and accurate record of all meetings and actions taken, and of all receipts and disbursements, and shall make reports of the same to the governing body of the municipality at stated intervals, not to exceed one year. Said reports shall be in writing, shall be filed in open meeting of the governing body of the municipality, at stated intervals, not to exceed one year. Said reports shall be in writing, shall be filed in open meeting of the governing body of the municipality, and a copy shall be filed with the municipal clerk or recorder.

SEC. 20. USE OF CERTAIN RIGHTS-OF-WAY.—*Be it further enacted*, That any municipality may use any right-of-way, easement or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of an electric plant, held by the state or any other municipality, *provided* that such other municipality shall consent to such use.

SEC. 21. CONDEMNATION.—*Be it further enacted*, That any municipality proceeding under the provisions of this Act is hereby authorized and empowered to condemn any land, easements or rights-of-way—either on, under or above the ground, for any and all purposes necessary in connection with the construction, operation and maintenance of an electric plant or improvements thereto. Title to property so condemned shall be taken in the name of the municipality. Such condemnation proceeding shall be pursuant to and in accordance with Sections 3109-3134, inclusive, of the Code of Tennessee, 1932; *provided, however*, that where title to any property sought to be condemned is defective, it shall be passed by decree of Court; *provided, further*, that where condemnation proceedings become necessary the Court in which such proceedings are filed shall, upon application by the municipality and upon the posting of a bond with the Clerk of the Court in such amount as the court may deem commensurate with the value of the property, order that the right of possession shall issue immediately or as soon and upon such terms as the court, in its discretion, may deem proper and just.

SEC. 22. ELECTION FOR DISPOSITION OF ELECTRIC PLANT.

—Be it further enacted, That the governing body of the municipality may dispose of all or substantially all of the electric plant acquired by means of bonds issued hereunder, but only with the approval of the supervisory body and a majority of those voting in an election held as follows: The governing body of the municipality shall adopt a resolution which shall state in substance (a) that the supervisory body has approved the proposed disposition; (b) a full description of the property to be disposed of; (c) the purchaser or purchasers thereof; (d) the purchase price; (e) the terms or conditions of sale if such disposition is not for cash, payable in full at the time of such disposition; (f) the date on which such election will be held; (g) the place or places where votes may be cast; and (h) the hours between which such voting places may be open. At such election the ballot shall contain the words "For the Disposition of the Electric Plant" and "Against the Disposition of the Electric Plant." In all other respects the election shall be called and held in the manner set forth in Section 4 hereof.

SEC. 23. SUPPLEMENTAL NATURE OF ACT.

—Be it further enacted, That the powers conferred by this Act shall be in addition and supplemental to the powers conferred by any other law. Bonds may be issued hereunder for the acquisition or improvement of an electric plant notwithstanding that any other law may provide for the issuance of bonds for like purposes and without regard to the requirements, restrictions or procedural provisions contained in any other law. Any proceedings heretofore taken by any municipality relating to the subject matters of this Act, whether or not commenced under any other law, may at the option of the governing body, be discontinued and new proceedings instituted under this Act.

SEC. 24. LIBERAL CONSTRUCTION OF THE ACT.

—Be it further enacted, That this Act is for the public purpose of promoting the increased use of electricity in the urban and rural areas of this State, and to enable all counties, as well as cities and towns, to secure the benefit of the surplus power generated or to be generated by the Tennessee Valley Authority at Wilson Dam in the State of Alabama

and Norris Dam in the State of Tennessee, or the power generated at any other works or dams. This Act is remedial in nature and the powers hereby granted shall be liberally construed to effectuate the purposes hereof, and to this end every municipality shall have power to do all things necessary or convenient to carry out the purposes hereof in addition to the powers expressly conferred in this Act.

SEC. 25. EXCISION OF UNCONSTITUTIONAL OR INEFFECTIVE PARTS OF ACT.—*Be it further enacted*, That it is hereby declared that the sections, clauses, sentences and parts of this Act are severable, are not matters of mutual essential inducement, and any of them shall be excised if this Act would otherwise be unconstitutional or ineffective; it is the intention to confer upon every municipality the whole or any part of the powers in this Act provided for, and if any one or more sections, clauses, or sentences and parts of this Act shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part of this Act in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

SEC. 26. TIME OF TAKING EFFECT.—*Be it further enacted*, That this Act shall take effect from and after its passage, the public welfare requiring it.

Passed February 12, 1935.

W. P. MOSS,
Speaker of the Senate.

WALTER M. HAYNES,
Speaker of the House of Representatives.

Approved February 14, 1935.

HILL McALLISTER,
Governor.

SECTION F

UNPUBLISHED OPINION OF THE TENNESSEE
SUPREME COURTKENTUCKY-TENNESSEE LIGHT &
POWER COMPANY

v.

CITY OF CLARKSVILLE, ET AL.

Montgomery Equity
December Term, 1937

OPINION

Under a franchise granted by the City of Clarksville the complainant maintains an electric distribution system, which it erected at a cost of \$400,000. In 1936 the City Council initiated proceedings under Chapter 32, Acts 1935, to establish its own system and a majority of the voters approved a proposal of the City Council to issue \$250,000 of bonds in furtherance of the plan.

The bill was filed to enjoin issuance of the bonds and establishment of the municipal power system upon the insistence that the City was proceeding under void statutes, and especially under Chapter 32, Acts 1935, alleged to violate the Constitution in several instances. The chancellor sustained the City's demurrer to the bill and the cause is here upon complainant's appeal and assignments of error which raise the question of whether or not the Act of 1935 contravenes Article I, section 8 and Article II, section 17 of the Constitution, and upon assignments of error directed to the action of the chancellor in relation to certain private acts.

Complainant's 5th and 14th assignments of error rest upon the charge that section 6 of the Act of 1935 imposes unreasonable limitation against actions or proceedings to question the validity of bonds issued under the Act and is a denial of due process contrary to Article I, section 8 of the Constitution. If we should construe this provision as a statute of limitations, it does not affect any preexisting right and as related to future actions it cannot be seen that the limit of 20 days for contesting the validity of pro-

ceedings for the issuance of bonds is so unreasonable as to amount to denial of due process. For reasons stated in the opinion by Mr. Justice McKinney in the cause of Tennessee Electric Power Company v. Fayetteville, we do not consider this provision violative of any constitutional right of complainant.

The other assignments of error involve application of Article II, section 17 of the Constitution. It is said that the caption of the Act afforded no reasonable notice of the following provisions in the body: (1) Subsection (d) and subsection (g) of section 3, authorizing municipalities to contract debts for the establishment and maintenance of the power plant otherwise than by issuance of bonds and acceptance of grants from the federal government; (2) section 6, imposing a limitation of 20 days within which to contest proceedings for the issuance of bonds; (3) section 11, authorizing issuance of bonds for the acquisition of a municipal power plant without regard to limitation imposed by other laws designed to avoid unreasonable debt and unreasonable taxation; (4) section 13, providing for the appointment by the municipality of a board of public utilities to supervise the plant and control its revenues, and by authority of the city government to exercise control over waterworks and sewers; (5) section 14 and subsequent provisions relating to the supervision and control of the power system and the disposition of its revenues; (6) section 22, empowering a municipality under prescribed conditions to dispose of its municipal electric plant; (7) section 23, providing that the powers conferred upon municipalities by the Act shall be supplemental to the municipal powers conferred by other laws.

It is sufficient to say, without copying the caption, that the purpose expressed therein is to authorize municipalities to acquire, and in their proprietary capacity to operate, a system for the distribution of electricity to consumers; to provide funds for the acquisition of the system and make rules and regulations for its management and the control and use of its revenues. Viewing the Act in its entirety, we find that provisions in the body, other than the last paragraph of section 13 hereafter discussed, relate, directly or indirectly, to the object expressed in the caption. The various provisions of the Act are germane to the common purpose expressed in the caption, of au-

thorizing municipalities to acquire and operate a system for the distribution of electricity, and meets the constitutional requirement as ruled in *Cannon v. Mathes*, 8 Heisk. 504, and many subsequent cases.

We find no merit in the 10th assignment of error, relating to the action of the chancellor in holding that the city is authorized to own and operate a power plant by its charter, Chapter 252, Acts 1929. That power is directly conferred by the charter and by another statute, which are to be construed in *pari materia* with Chapter 32, Acts 1935, providing means for the acquisition of the power system.

Other assignments of error directed to alleged infirmities in private acts mentioned in the record become immaterial. The last paragraph of section 13 of Chapter 32, Acts 1935, which introduced a provision authorizing the municipal governments to transfer control over their waterworks and sewers to the Electric Power Control Board, seems to be beyond the caption and unrelated to any purpose expressed either in the caption or in the Act. But the Court adopted the view expressed in the opinion of Mr. Justice McKinney in *Tennessee Electric Power Co. v. Town of Fayetteville* and as therein construed a majority of the Court holds the provision not beyond the caption. The decree of the chancellor is affirmed.

Cook, J. (s)

OFFICE OF CLERK OF THE SUPREME COURT

For the Middle Division of the State of Tennessee.

I, DAVID S. LANSDEN, Clerk of said Court, do hereby certify that the foregoing is a true, perfect, and complete copy of the Opinion of said Court, pronounced at its December term, 1937, in case of *Kentucky-Tennessee Light and Power Company* against *Clarksville* as appears of record on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Court, at office in the Capitol at Nashville, on this, the 4th day of April, 1938.

DAVID S. LANSDEN (s), Clerk.

SEAL

By _____ D. C.

SUPREME COURT OF THE UNITED STATES.

No. 27.—OCTOBER TERM, 1938.

The Tennessee Electric Power Co., et al., Appellants, vs. Tennessee Valley Authority, et al.	}	On Appeal from the United States District Court for the Eastern District of Tennessee.
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[January 30, 1939.]

Mr. Justice ROBERTS delivered the opinion of the Court.

The Tennessee Valley Authority Act¹ erects a corporation, an instrumentality of the United States, to develop by a series of dams on the Tennessee River and its tributaries a system of navigation and flood control and to sell the power created by the dams. Eighteen corporations which generate and distribute electricity in Tennessee, Kentucky, Mississippi, Alabama, Georgia, West Virginia, Virginia, North Carolina, and South Carolina, and one which transmits electricity in Tennessee and Alabama, filed a bill in equity, in the Chancery Court of Knox County, Tennessee, against the Authority and its three executive officers and directors. The prayers were that the defendants be restrained from generating electricity out of water power created, or to be created, pursuant to the Act and the Authority's plan of construction and operation; from transmitting, distributing, supplying or selling electricity so generated, or to be generated, in competition with any of the complainants; from constructing, or financing the construction of, steam or hydro-electric generating stations, transmission lines or means of distribution, which will duplicate or compete with any of their services; from regulating their retail rates through any contract, scheme or device; and from substituting federal regulation for state regulation of local rates for electric service, more especially by incorporating in contracts for the sale of electricity terms fixing retail rates. The defendants removed the cause to the United States District Court for Eastern Tennessee and there answered

¹ Act of May 18, 1933, 48 Stat. 58, as amended by Act of August 31, 1935, 49 Stat. 1075; 16 U. S. C. Sec. 831, *et seq.*

2 *Tennessee Elec. Power Co. vs. Tennessee Valley Authority.*

the bill. As required by the Act of August 24, 1937,² a court of three judges was convened which, after a trial, dismissed the bill.³

Fourteen of the complainants are here as appellants.⁴ They contend that water power cannot constitutionally be created in conformity to the terms of the Tennessee Valley Authority Act, and the United States will, therefore, acquire no title to it, because it will not be produced as an incident of the exercise of the federal power to improve navigation and control floods in the navigable waters of the nation. They affirm that the statutory plan is a plain attempt, in the guise of exerting granted powers, to exercise a power not granted to the United States, namely, the generation and sale of electric energy; that the execution of the plan contravenes the Fifth, Ninth, and Tenth Amendments of the Constitution, since the sale of electricity on the scale proposed will deprive the appellants of their property without due process of law, will result in federal regulation of the internal affairs of the states, and will deprive the people of the states of their guaranteed liberty to earn a livelihood and to acquire and use property subject only to state regulation. The appellees contest these contentions. For reasons about to be stated we do not consider or decide the issues thus mooted.

The Authority's acts, which the appellants claim give rise to a cause of action, comprise (1) the sale of electric energy at wholesale to municipalities empowered by state law to maintain and operate their own distribution systems; (2) the sale of such energy at wholesale to membership corporations organized under state law to purchase and distribute electricity to their members without profit; (3) the sale of firm and secondary power at wholesale to industrial plants.

The appellants are incorporated for the purpose and with the authority to conduct business as public utilities. Several do so only within the states of their incorporation; those chartered elsewhere have qualified as foreign corporations under the laws of the states in which they manufacture, transmit, or distribute electricity. Most of them have local franchises, licenses, or easements granted

² 50 Stat. 751, 752, 28 U. S. C. Sec. 380a.

³ 21 F. Supp. 947.

⁴ Georgia Power Company was enjoined from maintaining the action. See *Georgia Power Co. v. Tennessee Valley Authority*, 17 F. Supp. 769; 89 F. (2d) 218, 302 U. S. 692. Four other complainants have since been permitted to withdraw from the litigation without prejudice to its prosecution by the remaining appellants.

by municipalities or governmental subdivisions but it is admitted that none of these franchises confers an exclusive privilege.

While the Authority has not built or authorized any transmission line, has not sold or authorized the sale of electricity, or contracted for, or authorized any contract for, the sale of electricity by others, in territory served by nine of the appellants, it has done some or all of these things in areas served or susceptible of service by five of the companies; and it plans to enter in the same way the territory of other appellants. It is, clear, therefore, that its acts have resulted and will result in the establishment of municipal and co-operative distribution systems competing with those of some or all the appellants in territory which they now serve, or reasonably expect to serve by extension of their existing systems, and in direct competition with the appellants' enterprises through the sale of power to industries in areas now served by them or which they can serve by expansion of their facilities. The appellants assert that this competition will inflict substantial damage upon them. The appellees admit that such damage will result, but contend that it is not the basis of a cause of action since it is *damnum absque injuria*,—a damage not consequent upon the violation of any right recognized by law.

The appellants invoke the doctrine that one threatened with direct and special injury by the act of an agent of the government which, but for statutory authority for its performance, would be a violation of his legal rights, may challenge the validity of the statute in a suit against the agent.⁵ The principle is without application unless the right invaded is a legal right,—one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege.⁶ The appellants urge that the Tennessee Valley Authority, by competing with them in the sale of electric energy, is destroying their property and rights without warrant, since the claimed authorization of its

⁵ Philadelphia Co. v. Stimson, 223 U. S. 605, 619; Stafford v. Wallace, 258 U. S. 495, 512; Massachusetts v. Mellon, 262 U. S. 447, 488. The same rule applies to suits against state officers: Osborn v. The Bank, 9 Wheat. 738, 857, 859; Terrace v. Thompson, 263 U. S. 197, 214; Sterling v. Constantin, 287 U. S. 378, 393.

⁶ In re Ayers, 123 U. S. 443; Walla Walla v. Walla Walla Water Co., 172 U. S. 1; American School of Magnetic Healing v. McAnnulty, 187 U. S. 94; Ex parte Young, 209 U. S. 123; Scully v. Bird, 209 U. S. 481; Philadelphia Co. v. Stimson, *supra*; Lane v. Watts, 234 U. S. 525; Truax v. Raich, 239 U. S. 33; Lipke v. Lederer, 259 U. S. 557.

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transactions is an unconstitutional statute. The pith of the complaint is the Authority's competition. But the appellants realize that competition between natural persons is lawful. They seek to stigmatize the Authority's present and proposed competition as "illegal" by reliance on their franchises which they say are property protected from injury or destruction by competition. They classify the franchises in question as of two sorts,—those involved in the state's grant of incorporation or of domestication and those arising from the grant by the state or its subdivisions of the privilege to use and occupy public property and public places for the service of the public.

The charters of the companies which operate in the states of their incorporation give them legal existence and power to function as public utilities. The like existence and powers of those chartered in other states have been recognized by the laws of the states in which they do business permitting the domestication of foreign corporations. The appellants say that the franchise to be a public utility corporation and to function as such, with incidental powers, is a species of property which is directly taken or injured by the Authority's competition. They further urge that, though non-exclusive, the local franchises or easements, which grant them the privilege to serve within given municipal subdivisions, and to occupy streets and public places, are also property which the Authority is destroying by its competition. Since what is being done is justified by reference to the Tennessee Valley Authority Act, they say they have standing to challenge its constitutionality.

The vice of the position is that neither their charters nor their local franchises involve the grant of a monopoly or render competition illegal. The franchise to exist as a corporation, and to function as a public utility, in the absence of a specific charter contract on the subject, creates no right to be free of competition,⁷ and affords the corporation no legal cause of complaint by reason of the state's subsequently authorizing another to enter and operate in the same field.⁸ The local franchises, while having elements of property, confer no contractual or property right to be free of competition either from individuals, other public utility corpora-

⁷ See *Charles River Bridge v. Warren Bridge*, 11 Pet. 420, 548; *Turapike Co. v. The State*, 3 Wall. 210, 213; *Hamilton Gas Light Co. v. Hamilton City*, 146 U. S. 258, 268; *Pearsall v. Great Northern Railway*, 161 U. S. 646, 664.

⁸ Compare *Lchigh Water Co. v. Easton*, 121 U. S. 388.

tions, or the state or municipality granting the franchise.⁹ The grantor may preclude itself by contract from initiating or permitting such competition,¹⁰ but no such contractual obligation is here asserted.

The appellants further argue that even if invasion of their franchise rights does not give them standing, they may, by suit, challenge the constitutionality of the statutory grant of power the exercise of which results in competition. This is but to say that if the commodity used by a competitor was not lawfully obtained by it the corporation with which it competes may render it liable in damages or enjoin it from further competition because of the illegal derivation of that which it sells. If the thesis were sound, appellants could enjoin a competing corporation or agency on the ground that its injurious competition is *ultra vires*, that there is a defect in the grant of powers to it, or that the means of competition were acquired by some violation of the Constitution. The contention is foreclosed by prior decisions that the damage consequent on competition, otherwise lawful, is in such circumstances *damnum absque injuria*, and will not support a cause of action or a right to sue.¹¹

Certain provisions of state statutes regulating public utilities are claimed to confer on the appellants the right to be free of competition. Each of the states in which any of them operates, save Mississippi,¹² has established a commission to supervise and regulate public utilities. While the statutes¹³ differ in their provisions, all but that of Virginia require a public utility to obtain a certificate of convenience and necessity as a condition of doing business. The appellants commenced business in the various states prior to the

⁹ Joplin v. Southwest Missouri Light Co., 191 U. S. 150; Helena Water Works Co. v. Helena, 195 U. S. 383, 393; Madera Water Works v. Madera, 228 U. S. 454; Green v. Frazier, 253 U. S. 233; Puget Sound Power & Light Co. v. Seattle, 291 U. S. 619, 624.

¹⁰ Walla Walla v. Walla Walla Water Co., *supra*; Superior Water L. & P. Co. v. Superior, 263 U. S. 125.

¹¹ Railroad Co. v. Ellerman, 105 U. S. 166, 173; Alabama Power Co. v. Ickes, 302 U. S. 464, 479-483, and cases cited; Greenwood County v. Duke Power Co., 81 F. (2d) 986, 997; Duke Power Co. v. Greenwood County, 91 F. (2d) 665, 676; affirmed 302 U. S. 485.

¹² In Mississippi there is no State Commission, but municipalities are given the authority to regulate utilities within their territorial limits. Mississippi Code (1930) §§ 2400-1, 2414.

¹³ Alabama Code (1928) § 9795; Carroll's Kentucky Statutes (1936) § 3952-25; North Carolina Code (1935) § 1037(d); Williams' Tennessee Code (1934) §§ 5502-3; South Carolina Code (1934 Supp.) § 8555-2(23); Virginia Code (1936) §§ 3693-3774 k; West Virginia Code (1937) § 2562(1).

adoption of the requirement of such certificates and, so far as appears, they have none covering their entire operations. They have, however, obtained certificates for extensions made since the passage of the statutes; and they claim that, in any event, these laws afford them protection from the Authority's competition since any utility now seeking to serve in their territory must obtain a certificate, and hence they have standing to maintain this suit against the Authority which has none. The position cannot be maintained. Whether competition between utilities shall be prohibited, regulated or forbidden is a matter of state policy. That policy is subject to alteration at the will of the legislature.¹⁴ The declaration of a specific policy creates no vested right to its maintenance in utilities then engaged in the business or thereafter embarking in it.

Moreover, the states in which the Authority is now functioning have declared their policy in respect of its activities. Alabama has enacted that federal agencies, instrumentalities, or corporations shall not be under the jurisdiction of its Public Service Commission;¹⁵ that municipalities and improvement authorities may own and operate electric generating and distributing systems and may contract with a federal agency such as the Authority for the purchase of energy, and stipulate as to the use of the energy, including rates of resale;¹⁶ that nonprofit membership corporations may be formed for the distribution among their members of electricity with like power to contract with the Authority for the required energy.¹⁷ Tennessee has amended Section 5448 of its Code, which defines public utilities, so as to exclude federal corporations such as the Authority from the jurisdiction of the State Utilities Commission;¹⁸ has authorized municipalities to own and operate electric generating transmission and distribution systems and to contract for power with the Authority on terms deemed appropriate, including the fixing of resale prices;¹⁹ has authorized the formation of nonprofit membership

¹⁴ Compare *Wheeling & B. Bridge Co. v. Wheeling Bridge Co.*, 138 U. S. 287, 292; *Williams v. Wingo*, 177 U. S. 601, 604.

¹⁵ Alabama Acts, Regular Session 1935, No. 1.

¹⁶ Alabama Acts, Regular Session 1935, No. 155.

¹⁷ Alabama Acts, Regular Session 1935, No. 45.

¹⁸ Tennessee Public Acts 1935, chap. 42, p. 98.

¹⁹ Tennessee Public Acts 1935, chap. 32, p. 23; Tennessee Public Acts 1935, chap. 37, p. 78.

electric corporations with like powers to contract.²⁰ Kentucky has authorized municipalities to establish and maintain light, heat, and power plants;²¹ and has provided for the organization of nonprofit cooperative electric corporations which may contract with the Authority for purchase of energy and stipulate as to resale prices.²² Mississippi, which has no state law for regulation of utilities, has empowered municipal and county governments to establish and maintain electric distribution systems which may buy power from the Authority and contract as to resale prices;²³ has created a rural electrical authority and authorized the formation of power districts and nonprofit competitives, all competent to purchase energy from the Authority and distribute it and to contract with the Authority as to resale rates to consumers.²⁴ The Authority's action in these states is consonant with state law, but, as has been shown, if the fact were otherwise, the appellants would have no standing to restrain its continuance.

As the Authority has not acted in any way in North Carolina, South Carolina, Virginia or West Virginia, the appellant's contention that its proposed entry into some or all of them confers a right to sue for an injunction against injury thereby threatened has even less support.²⁵

The appellants may not raise any question of discrimination forbidden by the Fourteenth Amendment involved in state exemption of the Authority from commission regulation. For this reason *Frost v. The Corporation Commission*, 278 U. S. 515, on which they rely, is inapplicable. Manifestly there can be no challenge of the validity of state action in this suit.

²⁰ Tennessee Public Acts 1937, chap. 231, p. 882.

²¹ Carroll's Kentucky Statutes (1936) §§ 3480 d-1 to 3480 d-22.

²² Kentucky Acts, Fourth Extraordinary Session, 1936-1937, chap. 6, p. 25.

²³ Mississippi Laws, 1936, chap. 185, p. 354; chap. 271, p. 531.

²⁴ Mississippi Laws, 1936, chap. 183, p. 334; chap. 187, p. 370; chap. 184, p. 342.

²⁵ In fact several of the states in question have statutes which would to some extent, and in some circumstances, permit the purchase and use of power created by the Authority. In all of them municipalities may establish and operate their own distribution systems: North Carolina Code (1935) § 2807; South Carolina Code (1932) §§ 7278-7280, 8262; Virginia Code (1936) § 3031; West Virginia Code (1937) §§ 494, 591(86). North Carolina and Virginia have statutes permitting the formation of cooperatives which may buy power from the Authority under contracts fixing resale rates: Public Laws of North Carolina, 1935, chap. 291, p. 312; Virginia Code (1936) chap. 159 A. South Carolina has created a State Rural Electrification Authority with power to buy electricity from any federal agency: South Carolina Code (1936 Supplement) §§ 6010-2 ff.

A distinct ground upon which standing to maintain the suit is said to rest is that the acts of the Authority cannot be upheld without permitting federal regulation of purely local matters reserved to the states or the people by the Tenth Amendment and sanctioning destruction of the liberty said to be guaranteed by the Ninth Amendment to the people of the states to acquire property and employ it in a lawful business. The proposition can mean only that since the Authority sells electricity at rates lower than those heretofore maintained by the appellants such sale is an indirect regulation of appellants' rates. But the competition of a privately owned company authorized by the state to enter the territory served by one of the appellants would, in the same sense, constitute a regulation of rates. The contention amounts to saying that competition by an individual or a state corporation is not regulation but competition by a federal agency is. In contracting with municipalities and nonprofit corporations the Authority has stipulated respecting the price at which the energy supplied shall be resold by its vendees. That is said to be a regulation of the appellant's business. But it is nothing more than an incident of competition; it is but a method of seeking and assuring a market for the power which the Authority has for sale, and a lawful means to that end.²⁶ The sale of government property in competition with others is not a violation of the Tenth Amendment. As we have seen there is no objection to the Authority's operations by the states, and, if this were not so, the appellants, absent the states or their officers, have no standing in this suit to raise any question under the amendment.²⁷ These considerations also answer the argument that the appellants have a cause of action for alleged infractions of the Ninth Amendment.

Finally, it is asserted that the right to maintain this suit is sustained by certain allegations of concerted action by the officials of the Authority and the Public Works Administrator. The bill alleges that having adopted an unlawful plan the defendants have cooperated, and threaten to continue to cooperate in its execution, with Harold L. Ickes, as Administrator of the Federal Administration of Public Works, in a systematic campaign to coerce and intimidate the complainants into selling their existing systems in municipalities or territory in which the Authority desires to seize

²⁶ *Oregon & Calif. R. R. v. United States*, 238 U. S. 393; *United States v. Gratiot*, 26 Fed. Cas. 12, 13-14; affirmed 14 Pct. 526.

²⁷ Compare *Georgia Power Co. v. Tennessee Valley Authority*, 14 F. Supp. 673, 676.

the market for electricity; that, in order to make this coercion effective, Ickes has, in cooperation with, or on request of, the Authority, announced loans and grants of federal funds to municipalities; that the Authority and Ickes have cooperated, and continue to do so, to force municipalities to purchase the Authority's power under threats that, unless they do, proposed loans and grants for municipal systems will not be made. The bill states that, though Ickes "confederated and acted with the defendants in some of its illegal acts and is, therefore, a proper party, he is not a necessary party and is not joined as a defendant because he is beyond the jurisdiction of the court." There is a prayer that the defendants be restrained from confederating and acting in concert with Ickes for the described ends.

The District Court finds that the Authority has not indulged in coercion, duress, fraud, or misrepresentation in procuring contracts with municipalities, cooperatives or other purchasers of power; has not acted with any malicious or malevolent motive; and has not conspired with municipalities or other purchasers of power. The record justifies these findings. It is claimed, however, that they are inconclusive since the court erroneously excluded much proffered evidence tending to sustain the charge. An examination of the record discloses that certain of the evidence offered was properly excluded, and that in other instances the rejection of that offered constituted, at most, harmless error.

Error is assigned to the trial court's refusal to permit the taking of the deposition of the Public Works Administrator. In view of the prior opportunity which the claimants had to take this deposition, the lateness of the application, and other factors, permission to take the deposition was a matter within the court's discretion and it does not appear that the discretion was abused.

The remaining assignments of error directed to the exclusion of evidence of cooperation between the two federal agencies go to the rejection of evidence consisting largely of correspondence between them and press releases or announcements by officers of one or the other. The record contains all but a few of these rejected documents, those omitted apparently not being thought of importance. Scrutiny of them compels the conclusion that if the rejected evidence had been admitted, the trial court's holding that a conspiracy had not been proved should not be overruled.

The only findings on this subject requested by the appellants were to the effect that the Public Works Administration has co-operated with and assisted the Tennessee Valley Authority in the furtherance of the latter's power program and that the former has made contracts and allotments for loans and grants to twenty-three municipalities in the states of Alabama, Mississippi, and Tennessee, amounting to about fourteen million dollars, for the purpose of constructing municipal systems to distribute the Authority's power in competition with the appellants; that the applications for loan and grant in some instances specify that the municipal system will duplicate a privately owned system; in others that a large business will be done by the municipal plants because of the low promotional rates of the Authority; that some of the applications state they were filed to take advantage of the low rates offered by the Authority and that, with few exceptions, they state that the electricity to be distributed in the city will be purchased from the Authority. A further requested finding is that the applications of certain Alabama cities recite that they have secured written contracts from practically all consumers; that these contracts refer to lower rates to be secured, provided the rates charged by the city shall be thus prescribed by the Authority for resale at retail. The court refused to make the requested findings and error is assigned to this refusal. It is apparent that if the court had made the findings no conclusion of confederation or conspiracy, with malicious intent to harm the appellants or to destroy their business, would thereby have been required.

Cooperation by two federal officials, one acting under a statute whereby funds are provided for the erection of municipal plants, and the other under a statute authorizing the production of electricity and its sale to such plants, in competition with the appellants, does not spell conspiracy to injure their business. As the court below held, such cooperation does not involve unlawful concert, plan, or design, or cooperation to commit an unlawful act or to commit acts otherwise lawful with the intent to violate a statute.

In no aspect of the case have the appellants standing to maintain the suit and the bill was properly dismissed.

The decree is affirmed.

Mr. Justice REED took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 27.—OCTOBER TERM, 1938.

The Tennessee Electric Power Co., et al.,	} On Appeal from the	
Appellants,		United States District
vs.		Court for the Eastern
Tennessee Valley Authority, et al.	} District of Tennessee.	

[January 30, 1939.]

Mr. Justice BUTLER.

The decision just announced goes too far. It excludes from the courts complainants seeking constitutional protection of their property against defendants acting, as it is alleged, under invalid claim of governmental authority in setting up and carrying on a program calculated to destroy complainants' business. The issues joined by the parties, tried below and fully presented to this Court, include the question whether, when construed to authorize the things done and threatened by defendants, the challenged enactment is authorized by the Constitution or repugnant to the Fifth, Ninth, and Tenth Amendments. The issues also include the question whether, as being applied, the Act is void because the execution of defendants' program will deprive complainants of their property without due process of law in contravention of the Fifth Amendment. This Court holds complainants have no standing to challenge the validity of the Act and puts aside as immaterial their claim that by defendants' unauthorized acts their properties are being destroyed.

The opinion states: "The Authority's acts which the appellants claim give rise to a cause of action, comprise (1) the sale of electrical energy at wholesale to municipalities empowered by state law to maintain and operate their own distribution systems; (2) the sale of such energy at wholesale to membership corporations organized under state law to purchase and distribute electricity to their members without profit; (3) the sale of firm and secondary power at wholesale to industrial plants."

2 *Tennessee Elec. Power Co. vs. Tennessee Valley Authority.*

That the substance of complainants' case may not be so compressed is disclosed by the summary of their bill that follows:

Complainants are 19 public utilities. Each, authorized by law, is engaged in generating and selling electricity within the political subdivisions of various States. Some have long-term contracts under which they furnish large quantities of electricity. They are more than able to fill the needs of the territories in which they operate and are ready to supply such additional facilities as may be needed in the future. Their properties are modern and economically operated and possess great value as going concerns. Their rates yield no more than a reasonable return and are fully regulated by the States in which they serve.

Defendants are the Tennessee Valley Authority, a body corporate created by the Act of May 18, 1936, with the right to sue and be sued, and its three directors, charged with the duty of exercising the powers of the Authority. Harold L. Ickes, the Administrator of the Public Works Administration, has confederated with defendants in some acts charged to be illegal; he is not sued because beyond the jurisdiction of the court. From its principal office at Knoxville, Tennessee, the Authority carries on a proprietary business as a public utility for the generation, transmission, distribution and sale of electricity in Tennessee, Mississippi, Georgia and Alabama.

On its face, the Act discloses purpose to authorize a large and indeterminate number of great works for the primary purpose of creating a vast supply of electric power, to use this power to establish the United States in the business of producing, transmitting, and selling electric power, and to dispose of this power in a manner inconsistent with the principles of our dual system and so as to govern the concerns reserved to the States. Any references in the Act to navigation or to any other constitutional objective are unsubstantial and mere pretenses or pretexts under which it is sought to achieve an object reserved to the States. Except with respect to power available at Wilson Dam prior to the acts complained of, the program is one of creating an outlet for power deliberately produced as a commercial enterprise to be sold in unlawful and destructive competition with power now available in adequate quantities.

The program contemplates ultimately the development of all power sites on the Tennessee River and all its tributaries as an integrated electric power system, the construction and operation of hydro-electric plants at these sites, the use of auxiliary steam plants, the interconnection of all plants, and the elimination of existing privately owned utilities.

In the area of over 40,000 square miles, there are 149 water power sites which, with auxiliary steam plants, will produce 25 billion k.w.h. annually. Present consumption of the area is 56% of that quantity. The electric power to be produced by defendants can only be sold through displacement of the complainants. Execution of the program will necessarily destroy all or a substantial part of the business and property of each of the complainants.

Defendants have taken over Wilson Dam and the nitrate plant and have commenced, or recommended to Congress, the construction of 10 other dams; their program calls for 11 completed dams by July 1, 1943. They have prepared plans for the construction of high-tension transmission lines from the dams to at least 14 cities and indeed to the whole area. They have purchased or are attempting to purchase distribution systems in at least 15 cities. They have entered into contracts to sell power to various communities and industries for a 20-year period and have agreed to supply firm power to other and larger cities.

The avowed purpose of the program is to effect a federal regulation of intrastate electric rates and service by a so-called "yardstick" method or "regulation by competition". The yardstick for wholesale rates is the wholesale rate charged by the Authority. It is unreasonable and confiscatory as a measure of complainants' rates in that it excludes the cost of the major part of the investment necessary to render the service and excludes necessary operating expenses. The yardstick for retail rates is the sum of the wholesale rate and the amount which the Authority allows municipalities to add to the wholesale rate to cover cost of local distribution; it excludes many items of necessary cost of rendering the service.

Pursuant to a plan promulgated in 1933, defendants are conducting a systematic campaign for the purpose of disrupting the established business relations between complainants and their customers, destroying the good will built up by complainants, seizing their markets and inciting the residents of communities served by

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them to cooperate with defendants in their scheme to develop an absolute monopoly.

With full knowledge of the noncompensatory and confiscatory character of the yardstick rates, they have represented to the inhabitants of communities served by complainants that these "yardsticks" were fair measures of reasonable rates and have thereby attempted to incite the inhabitants to build publicly owned systems using power furnished by the Authority, to lead them to believe that they are being charged unreasonable rates, to stir up political agitation against privately owned utilities and to bring complainants into disrepute and disfavor.

The defendants attempt to coerce complainants to sell distribution systems and transmission lines, in territories which defendants intend to appropriate, at prices far below fair value by threatening that, unless complainants accede, they will construct, or cause to be constructed, duplicate facilities subsidized in construction and operation by federal funds and render complainants' properties wholly valueless. The Administrator of the Public Works Administration has cooperated with defendants. Defendants inform the owners that, unless they sell, either the Authority or the municipalities will build duplicate systems with federal funds. At defendants' request, the Administrator authorizes and announces a gift to the municipality of from 30% to 45% of the cost of the duplicate system and agrees to lend the balance, repayable out of earnings, if any, of the duplicate plant, upon condition that the municipality will agree to use power of the Authority and will, as soon as possible, oust the existing utility. If the utility agrees to sell, the allotments are canceled without regard to the will of the municipality. This policy has already been applied in certain cities. The defendants and Administrator also cooperate to force municipalities to agree to purchase power furnished by the Authority by threats that otherwise federal allotments for public works will be canceled or denied.

Defendants have caused bills, designed to forward their power program, to be submitted to the legislatures of various States in the area and have lobbied for and brought about their passage. They have installed Authority personnel throughout the area to disseminate propaganda in behalf of the program. The Electric Home and Farm Authority, a corporation set up as a governmental agency of which the individual defendants are directors, finances

sale of electrical devices, prints and circulates costly advertising in praise of the Authority program. Defendants have offered to supply electricity to large industrial customers of some of the complainants at noncompensatory and discriminatory rates. They have attempted to persuade complainants' customers to break existing contracts. Complainants cannot meet this competition because of the noncompensatory rates and because they are forbidden by state law to make discriminatory rates.

The bill prays invalidation of the Act as unconstitutional and injunction and other relief against defendants.

Unquestionably, the bill shows that complainants are not asserting a right held or complaining of an injury sustained in common with the general public. They allege facts that unmistakably show that each has a valuable right as a public utility, non-exclusive though it is, to serve in territory covered by its franchise, and that, inevitably the value of its business and property used will suffer irreparable diminution by defendants' program and acts complained of. If, because of conflict with the Constitution, the Act does not authorize the enterprise formulated and being executed by defendants, then their conduct is unlawful and inflicts upon complainants direct and special injury of great consequence. Therefore, they are entitled to have this Court decide upon the constitutional questions they have brought here. See *Massachusetts v. Mellon*, 262 U. S. 447, 488; *Frost v. Corporation Commission*, 279 U. S. 515, 521.

Mr. Justice McREYNOLDS joins in this opinion.